

**SUPREME COURT OF CANADA**

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| **Citation:** Windsor (City) *v.* Canadian Transit Co., 2016 SCC 54, [2016] 2 S.C.R. 617 | **Appeal heard:** April 21, 2016  **Judgment rendered:** December 8, 2016  **Docket:** 36465 |

Between:

Corporation of the City of Windsor

Appellant

and

Canadian Transit Company

Respondent

- and -

Attorney General of Canada and

Federation of Canadian Municipalities

Interveners

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

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| **Reasons for Judgment:**  (paras. 1 to 72)  **Joint Dissenting Reasons:**  (paras. 73 to 121)  **Dissenting Reasons:**  (paras. 122 to 131) | Karakatsanis J. (McLachlin C.J. and Cromwell, Wagner and Gascon JJ. concurring)  Moldaver and Brown JJ. (Côté J. concurring)  Abella J. |

Windsor (City) *v.* Canadian Transit Co., 2016 SCC 54, [2016] 2 S.C.R. 617

The Corporation of the City of Windsor Appellant

v.

The Canadian Transit Company Respondent

and

Attorney General of Canada and

Federation of Canadian Municipalities Interveners

**Indexed as: Windsor (City) *v.* Canadian Transit Co.**

2016 SCC 54

File No.: 36465.

2016: April 21; 2016: December 8.

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

on appeal from the federal court of appeal

*Courts — Jurisdiction — Federal Court — Relief sought under constitutional law — Company incorporated by federal legislation owning and operating Canadian half of bridge between Canada and United States — Company purchasing residential properties near bridge to facilitate maintenance and expansion — City issuing repair orders against properties pursuant to municipal by-law — Company applying to Federal Court for declarations that it has rights under its incorporating legislation which supersede municipal by-law — Whether Federal Court has jurisdiction to decide whether Company must comply with by-law and repair orders — Federal Courts Act, R.S.C. 1985, c. F-7, s. 23 — An Act to incorporate The Canadian Transit Company, S.C. 1921, c. 57.*

The Canadian Transit Company owns and operates the Canadian half of the Ambassador Bridge connecting Windsor, Ontario, and Detroit, Michigan. The Company was incorporated in 1921 by *An Act to incorporate The Canadian Transit Company* (the “*CTC Act*”). The *CTC Act* empowered the Company to construct, maintain and operate a general traffic bridge across the Detroit River, to purchase, lease or otherwise acquire and hold lands for the bridge, and to construct, erect and maintain buildings and other structures required for the convenient working of traffic to, from and over the bridge. The *CTC Act* also declared the works and undertaking of the Company to be for the general advantage of Canada, triggering federal jurisdiction under the *Constitution Act, 1867*.

The Company has purchased more than 100 residential properties in Windsor with the intention of eventually demolishing the homes and using the land to facilitate maintenance and expansion of the bridge and its facilities. Most of the homes are now vacant and in varying states of disrepair. The City of Windsor issued repair orders against the properties pursuant to a municipal by‑law. The Company has not complied with the repair orders. The parties have been engaged in proceedings relating to these repair orders in the Ontario Superior Court of Justice. In addition, the Company applied to the Federal Court for declarations to the effect that it has certain rights under the *CTC Act* which supersede the by‑law and the repair orders issued under it. The City moved to strike the Company’s notice of application on the ground that the Federal Court lacks jurisdiction to hear the application. The Federal Court struck the Company’s notice of application for want of jurisdiction. The Federal Court of Appeal set aside that decision. This appeal deals only with the preliminary issue of whether the Federal Court has jurisdiction to decide whether the Company must comply with the City’s by‑law and repair orders.

*Held* (Abella, Moldaver, Côté and Brown JJ. dissenting): The appeal should be allowed, the order of the Federal Court of Appeal set aside and the order of the Federal Court striking the Company’s notice of application reinstated.

*Per* McLachlin C.J. and Cromwell, Karakatsanis, Wagner and Gascon JJ.: The Federal Court does not have the jurisdiction to decide whether the City’s by‑law applies to the Company’s residential properties. The issue should be decided by the Ontario Superior Court of Justice.

To decide whether the Federal Court has jurisdiction over a claim, it is necessary to determine the essential nature or character of that claim. Determining the claim’s essential nature allows the court to assess whether it falls within the scope of s. 23(c) of the *Federal Courts Act*, which grants jurisdiction to the Federal Court only when a claim for relief has been made, or a remedy has been sought, “under an Act of Parliament or otherwise”. In this case, it is clear that what the Company ultimately seeks is immunity from the requirements of the by‑law. The issue is therefore whether the Federal Court has the jurisdiction to decide a claim that a municipal by‑law is constitutionally inapplicable or inoperative in relation to a federal undertaking.

The Federal Court has only the jurisdiction it has been conferred by statute: it is a statutory court, without inherent jurisdiction. Accordingly, the language of the *Federal Courts Act* is completely determinative of the scope of the court’s jurisdiction. Parliament established the Federal Court pursuant to its competence, under s. 101 of the *Constitution Act, 1867*, to establish “additional Courts for the better Administration of the Laws of Canada”. The role of the Federal Court is therefore constitutionally limited to administering federal law. The three‑part test for jurisdiction, set out by this Court in *ITO—International Terminal Operators Ltd. v. Miida Electronics Inc.*, [1986] 1 S.C.R. 752, is designed to ensure the Federal Court does not overstep this limited role. The first part of the test requires that a federal statute grant jurisdiction to the Federal Court. Section 23(c) grants jurisdiction to the Federal Court when “a claim for relief is made or a remedy is sought under an Act of Parliament or otherwise”, that is, when the claimant is seeking relief under federal law. The claimant’s cause of action, or the right to seek relief, must be created or recognized by a federal statute, a federal regulation or a rule of the common law dealing with a subject matter of federal legislative competence. The explicit language of s. 23 of the *Federal Courts Act* requires that the relief be sought under — and not merely in relation to — federal law. Requiring the right to seek relief to arise directly from federal law brings clarity to the scope of the Federal Court’s concurrent jurisdiction. Giving effect to the explicit wording of s. 23 minimizes jurisdictional disputes by ensuring that litigants know the scope of the Federal Court’s jurisdiction in advance. This will avoid unnecessary litigation, including disputes about whether the court should decline to exercise jurisdiction even if it has jurisdiction to hear the matter.

In this case, the Company is not seeking relief “under an Act of Parliament or otherwise”, as required by s. 23(c). The Company is seeking relief under s. 23(c) itself, or alternatively under the *CTC Act*. However, s. 23 is not itself a federal law under which the Company can seek relief. It confers on the Federal Court jurisdiction over certain claims, but does not confer on parties the right to make those claims in the first place. For that right, parties must look to other federal law. Further, although the *CTC Act* confers certain rights and powers (and imposes certain responsibilities) on the Company, it also does not give the Company any kind of right of action or right to seek the relief sought. The Company is in fact seeking relief under constitutional law, because constitutional law confers on parties the right to seek a declaration that a law is inapplicable or inoperative. A party seeking relief under constitutional law is not seeking relief “under an Act of Parliament or otherwise” within the meaning of s. 23; constitutional law cannot be said to be federal law for the purposes of s. 23. Therefore, s. 23(c) does not grant jurisdiction over the Company’s application to the Federal Court and the first part of the *ITO* test for jurisdiction is not met. There is therefore no need to consider whether the second and third parts of the *ITO* test are met. Because the test is not met, it is plain and obvious that the Federal Court lacks jurisdiction to hear the application. The motion to strike the Company’s notice of application in the Federal Court must succeed.

*Per* Moldaver,Côté and Brown JJ. (dissenting): The Federal Court has jurisdiction to hear the Company’s application and the appeal should accordingly be dismissed.

The Federal Court’s jurisdiction should be construed broadly. The Federal Court was designed to achieve two objectives: ensuring that members of the public would have resort to a national court exercising a national jurisdiction when enforcing a claim involving matters which frequently involve national elements, and making it possible for litigants who live in different parts of the country to have a common and convenient forum in which to enforce their legal rights. These purposes are better served by a broad construction of its jurisdiction.

There is no need to characterize the essential nature of the case as a preliminary step in the analysis of jurisdiction. The test established in *ITO—International Terminal Operators Ltd. v. Miida Electronics Inc.*, [1986] 1 S.C.R. 752, provides a comprehensive framework of analysis for determining whether the Federal Court has jurisdiction. What matters is only whether there is a statutory grant of jurisdiction, whether federal law is essential to the disposition of the case, and whether the law is validly federal. The essential nature of the case is not relevant to whether the Federal Court has jurisdiction, but to whether it should exercise it. There may be cases in which — despite the *ITO* test being met — the Federal Court should consider declining jurisdiction.

The three branches of the *ITO* test are met in this case. First, s. 23(c) of the *Federal Courts Act* provides the necessary statutory grant of jurisdiction. The three crucial elements for s. 23(c) to amount to the required statutory grant of jurisdiction under the first branch of the *ITO* test are present here: the Company has claimed relief, its claim is in relation to a work or undertaking extending beyond the limits of a province, and the claim was made “under an Act of Parliament or otherwise in relation to” this international work or undertaking.

Requiring a federal statute to expressly create a cause of action before jurisdiction may be founded “under an Act of Parliament” within the meaning of s. 23 is unduly narrow and inconsistent with Parliament’s intent in creating the Federal Court. Section 23 should be construed broadly to ensure that, if the claim for relief is related to a federal work or undertaking and the rights being enforced arise from an Act of Parliament, the claimants may approach the Federal Court. In this case, the rights the Company seeks to enforce are sourced in two separate Acts of Parliament, both of which are essential to the ultimate relief sought by the Company: the *CTC Act* and the *International Bridges and Tunnels Act*. As such, since the claim for relief is related to a federal work or undertaking and the rights that the claimant seeks to enforce arise from Acts of Parliament, s. 23(c) confers a statutory grant of jurisdiction on the Federal Court.

The *CTC Act* also satisfies the second branch of the *ITO* test: it is essential to the disposition of this case and it nourishes the statutory grant of the Federal Court’s jurisdiction, because it is central to the constitutional claim. The declarations sought by the Company in the Federal Court make it clear that the dispute is generally concerned with the *CTC Act* and federal jurisdiction over federal works and undertakings, pursuant to the *Constitution Act, 1867*. Two interrelated questions are at the heart of this dispute, both of which are intimately tied to the *CTC Act*: whether the properties purchased by the Company form part of the “federal work or undertaking” of the Ambassador Bridge, and, if so, whether those properties are immune from the municipal by‑law based on the doctrine of interjurisdictional immunity. Resolving these constitutional questions primarily entails interpreting the *CTC Act*. The *CTC Act* thus plays an essential role in the outcome of this case. As for the third branch of the *ITO* test, it is also satisfied since there is no dispute in this case that the *CTC Act* is valid federal law.

As all three branches of the *ITO* test are met in this case, the Federal Court has jurisdiction to hear the Company’s application. It remains for the Federal Court to decide whether it should exercise its jurisdiction to hear the Company’s application, or decline to do so in favour of the Superior Court of Justice. In deciding whether to exercise its jurisdiction, the Federal Court should consider whether the Company has an adequate and effective recourse in a forum in which litigation is already taking place, expeditiousness, and the economical use of judicial resources. In the present circumstances, there may be good reason for the Federal Court to decline to hear the Company’s application.

*Per* Abella J. (dissenting): The appeal should be dismissed in part and a stay of the Federal Court proceedings should be entered. This Court’s test in *ITO—International Terminal Operators Ltd. v. Miida Electronics Inc.*, [1986] 1 S.C.R. 752, has been met. However, notwithstanding that the Federal Court has concurrent jurisdiction with the Ontario Superior Court of Justice, it should not exercise it in this case. Both the Canadian Transit Company and the City appealed orders of the Property Standards Committee to the Ontario Superior Court. Rather than wait for the outcome of the appeals before the Superior Court, the Company sought to activate the Federal Court’s intervention.

It cannot be seriously contested that the issues raised by the Company in its Federal Court application can be resolved in the context of the parties’ ongoing litigation before the Superior Court. The result of the Company diverting the course of the proceedings into a jurisdictional side‑show is obvious — additional expense and delay in aid of nothing except avoiding a determination of the merits for as long as possible. To date, that jurisdictional diversion has cost the public a delay of three years. There is no basis for further delaying the Superior Court proceedings. In the words of the Federal Court’s rules, it is neither “just” nor “expeditious” for it to weigh in on these proceedings, needlessly complicating and extending them. Remitting the matter to the Federal Court to reach the irresistible conclusion that a stay is warranted adds needlessly to the expense and delay.

**Cases Cited**

By Karakatsanis J.

**Applied:** *ITO—International Terminal Operators Ltd. v. Miida Electronics Inc.*, [1986] 1 S.C.R. 752; *Quebec North Shore Paper Co. v. Canadian Pacific Ltd.*, [1977] 2 S.C.R. 1054; **distinguished:** *Strickland v. Canada (Attorney General)*, 2015 SCC 37, [2015] 2 S.C.R. 713; **referred to:** *Hodgson v. Ermineskin Indian Band* (2000), 180 F.T.R. 285; *JP Morgan Asset Management (Canada) Inc. v. Canada (National Revenue)*, 2013 FCA 250, [2014] 2 F.C.R. 557; *Sifto Canada Corp. v. Minister of National Revenue*, 2014 FCA 140, 461 N.R. 184; *Domtar Inc. v. Canada (Attorney General)*, 2009 FCA 218, 392 N.R. 200; *Roitman v. Canada*, 2006 FCA 266, 353 N.R. 75; *Canadian Pacific Railway v. R.*, 2013 FC 161, [2014] 1 C.T.C. 223; *Verdicchio v. R.*, 2010 FC 117, [2010] 3 C.T.C. 80; *R. v. Thomas Fuller Construction Co. (1958) Ltd.*, [1980] 1 S.C.R. 695; *Consolidated Distilleries, Ltd. v. The King*, [1933] A.C. 508; *Attorney General of Canada v. Law Society of British Columbia*, [1982] 2 S.C.R. 307; *Québec Téléphone v. Bell Telephone Co. of Canada*, [1972] S.C.R. 182; *Ontario v. Criminal Lawyers’ Association of Ontario*, 2013 SCC 43, [2013] 3 S.C.R. 3; *MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 S.C.R. 725; *R. v. Cunningham*, 2010 SCC 10, [2010] 1 S.C.R. 331; *Commonwealth of Puerto Rico v. Hernandez*, [1975] 1 S.C.R. 228; *Roberts v. Canada*, [1989] 1 S.C.R. 322; *Norrail Transport Inc. v. Canadian Pacific Ltd.* (1998), 154 F.T.R. 161; *Prudential Assurance Co. v. Canada*, [1993] 2 F.C. 293; *Bensol Customs Brokers Ltd. v. Air Canada*, [1979] 2 F.C. 575; *Northern Telecom Canada Ltd. v. Communication Workers of Canada*, [1983] 1 S.C.R. 733; *R. v. Henry*, 2005 SCC 76, [2005] 3 S.C.R. 609; *The Queen v. Montreal Urban Community Transit Commission*, [1980] 2 F.C. 151; *R. v. Lloyd*, 2016 SCC 13, [2016] 1 S.C.R. 130; *Douglas/Kwantlen Faculty Assn. v. Douglas College*, [1990] 3 S.C.R. 570; *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295; *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.*, [1995] 1 F.C. 588.

By Moldaver and Brown JJ. (dissenting)

*ITO—International Terminal Operators Ltd. v. Miida Electronics Inc.*, [1986] 1 S.C.R. 752; *Canada (Human Rights Commission) v. Canadian Liberty Net*, [1998] 1 S.C.R. 626; *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62, [2010] 3 S.C.R. 585; *Bensol Customs Brokers Ltd. v. Air Canada*, [1979] 2 F.C. 575; *Canadian Pacific Ltd. v. United Transportation Union*, [1979] 1 F.C. 609; *Federal Liberal Agency of Canada v. CTV Television Network Ltd.*, [1989] 1 F.C. 319; *Pacific Western Airlines Ltd. v. The Queen*, [1979] 2 F.C. 476; *Quebec North Shore Paper Co. v. Canadian Pacific Ltd.*, [1977] 2 S.C.R. 1054; *Canadian Western Bank v. Alberta*, 2007 SCC 22, [2007] 2 S.C.R. 3; *Commission de transport de la Communauté urbaine de Québec v. Canada (National Battlefields Commission)*, [1990] 2 S.C.R. 838; *Rhine v. The Queen*, [1980] 2 S.C.R. 442; *Strickland v. Canada (Attorney General)*, 2015 SCC 37, [2015] 2 S.C.R. 713.

By Abella J. (dissenting)

*ITO—International Terminal Operators Ltd. v. Miida Electronics Inc.*, [1986] 1 S.C.R. 752; *Coote v. Lawyers’ Professional Indemnity Co.*, 2013 FCA 143; *Strickland v. Canada (Attorney General)*, 2015 SCC 37, [2015] 2 S.C.R. 713.

**Statutes and Regulations Cited**

*Act to incorporate The Canadian Transit Company*, S.C. 1921, c. 57, ss. 2, 8.

*Canada Act 1982* (U.K.), 1982, c. 11, s. 1.

*Canada Transportation Act*, S.C. 1996, c. 10, s. 116(5).

*Carriage by Air Act*, R.S.C. 1985, c. C‑26.

*Constitution Act, 1867*, ss. 91, 92(10)(*a*), (*c*), (14), 96, 100, 101.

*Constitution Act, 1982*, ss. 38 to 49, 52.

*Exchequer Court Act*, R.S.C. 1970, c. E‑11, ss. 17 to 30.

*Federal Court Act*, S.C. 1970‑71‑72, c. 1 [reproduced in R.S.C. 1970, c. 10 (2nd Supp.)].

*Federal Courts Act*, R.S.C. 1985, c. F‑7, ss. 2 “relief”, 3, 4, 18, 23, 50(1).

*Federal Courts Rules*, SOR/98‑106, rr. 3, 221(1)(a).

*Highway Traffic Act*, R.S.O. 1990, c. H.8.

*International Bridges and Tunnels Act*, S.C. 2007, c. 1, s. 5.

*Property Standards By‑law*, City of Windsor By‑law No. 147‑2011, September 6, 2011.

*Radiocommunication Act*, R.S.C. 1985, c. R‑2, s. 18(1).

*Supreme and Exchequer Court Act*, S.C. 1875, c. 11.

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Saunders, Brian J., Donald J. Rennie and Graham Garton. *Federal Courts Practice 2014*. Toronto: Carswell, 2013.

Scott, Stephen A. “Canadian Federal Courts and the Constitutional Limits of Their Jurisdiction” (1982), 27 *McGill L.J.* 137.

APPEAL from a judgment of the Federal Court of Appeal (Dawson, Stratas and Scott JJ.A.), 2015 FCA 88, [2016] 1 F.C.R. 265, 384 D.L.R. (4th) 547, 472 N.R. 361, 98 Admin. L.R. (5th) 181, [2015] F.C.J. No. 383 (QL), 2015 CarswellNat 816 (WL Can.), setting aside a decision of Shore J., 2014 FC 461, 455 F.T.R. 154, [2014] F.C.J. No. 495 (QL), 2014 CarswellNat 1598 (WL Can.). Appeal allowed, Abella, Moldaver, Côté and Brown JJ. dissenting.

*Christopher J. Williams*, *Courtney V. Raphael* and *Jody E. Johnson*, for the appellant.

*John B. Laskin* and *James Gotowiec*, for the respondent.

*Sean Gaudet* and *Marc Ribeiro*, for the intervener the Attorney General of Canada.

*Stéphane Émard‑Chabot* and *Marie‑France Major*, for the intervener the Federation of Canadian Municipalities.

The judgment of McLachlin C.J. and Cromwell, Karakatsanis, Wagner and Gascon JJ. was delivered by

Karakatsanis J. —

1. Introduction
2. The Canadian Transit Company owns and operates the Canadian half of the Ambassador Bridge connecting Windsor, Ontario, and Detroit, Michigan. Over the past decade the Company has purchased more than 100 residential properties in Windsor with the intention of eventually demolishing the homes and using the land to facilitate maintenance and expansion of the bridge and its facilities. Most of the homes are now vacant and, according to the City of Windsor, in varying states of disrepair. The City regards them as a blight on the Olde Sandwich Towne neighbourhood and, pursuant to its by-laws, has issued more than 100 repair orders against the properties.
3. The Company has not complied with the repair orders, claiming that the Ambassador Bridge is a federal undertaking and the City’s by-laws and repair orders cannot constitutionally apply to it. The parties have been engaged in proceedings relating to those repair orders in the Ontario Superior Court of Justice. The Company has also sought a number of declarations from the Federal Court.
4. This appeal deals only with the preliminary issue of whether the Federal Court has jurisdiction to decide whether the Company must comply with the City’s by-laws and repair orders. The City says only the Ontario Superior Court of Justice has jurisdiction to settle the issue.
5. I agree with the City: the Federal Court does not have jurisdiction to decide whether the City’s by-laws apply to the Company’s residential properties. Rather, the issue must be decided by the Ontario Superior Court of Justice. I would allow the appeal.
6. Facts
7. The Canadian Transit Company was incorporated in 1921 by a special Act of Parliament, *An Act to incorporate The Canadian Transit Company*, S.C. 1921, c. 57 (*CTC Act*). Subject to certain other enactments, the *CTC Act* empowered the Company to “construct, maintain and operate a . . . general traffic bridge across the Detroit river . . . with all necessary approaches, terminal facilities, machinery and appurtenances” and to “purchase, lease or otherwise acquire and hold lands for the bridge . . . and construct and erect and maintain buildings and other structures required for the convenient working of traffic to, from and over the said bridge” (s. 8(a) and (e)). The *CTC Act* also declared the “works and undertaking” of the Company to be for the general advantage of Canada (s. 2), triggering federal jurisdiction under ss. 92(10)(*c*) and 91(29) of the *Constitution Act, 1867*.
8. The Ambassador Bridge opened in 1929. As of July 2010, approximately one quarter of all surface trade between Canada and the United States passed over it.
9. Between 2004 and 2013, the Company purchased 114 residential properties in Windsor to the immediate west of the bridge, intending eventually to demolish the homes and use the land to facilitate maintenance and expansion of the bridge and its associated facilities.
10. These purchases have been a source of considerable tension between the Company and the City of Windsor. The City believes the Company has abandoned and neglected the properties and they have become a blight on the Olde Sandwich Towne neighbourhood.
11. In September 2013, the City issued repair orders against all 114 properties pursuant to its *Property Standards* *By-law*, City of Windsor By-law No. 147-2011. The Company appealed the repair orders to the Property Standards Committee, with mixed success: the Committee decided that the Company could demolish 83 homes but deferred decision on the remaining 31 properties pending further negotiation between the parties. On further appeal by the City, the Committee upheld the City’s original repair orders for the 31 properties.
12. The Company and the City both appealed the Committee’s decisions to the Ontario Superior Court of Justice.
13. The Company also applied to the Federal Court, with notice to the City, for declarations to the effect that the Company has certain rights under the *CTC Act* which supersede the By-law and any repair orders issued under it.
14. Pursuant to r. 221(1)(a) of the *Federal Courts Rules*, SOR/98-106, the City moved to strike the Company’s notice of application on the ground that the Federal Court lacks jurisdiction to hear the application.
15. By agreement between the parties, the Ontario Superior Court of Justice appeals have been held in abeyance pending determination of the Federal Court motion to strike.
16. Statutory Provisions
17. The Federal Court was established by Parliament under s. 101 of the *Constitution Act, 1867*, which provides as follows:

101. The Parliament of Canada may, notwithstanding anything in this Act, from Time to Time provide for the Constitution, Maintenance, and Organization of a General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada.

1. Pursuant to this constitutional authority, Parliament created the Federal Court “for the better Administration of the Laws of Canada” in 1971 (*Federal Court Act*, R.S.C. 1970, c. 10 (2ndSupp.)). Federal court jurisdiction is now governed by the *Federal Courts Act*, R.S.C. 1985, c. F-7.
2. The provision at the heart of this appeal is s. 23(c) of the *Federal Courts Act*, on which the Company relies to establish the jurisdiction of the Federal Court:

**23** Except to the extent that jurisdiction has been otherwise specially assigned, the Federal Court has concurrent original jurisdiction, between subject and subject as well as otherwise, in all cases in which a claim for relief is made or a remedy is sought under an Act of Parliament or otherwise in relation to any matter coming within any of the following classes of subjects:

. . .

**(c)** works and undertakings connecting a province with any other province or extending beyond the limits of a province.

1. The *Federal Courts Act* defines “relief” to include “every species of relief, whether by way of damages, payment of money, injunction, declaration, restitution of an incorporeal right, return of land or chattels or otherwise” (s. 2).
2. Decisions Below
   1. Federal Court, 2014 FC 461, 455 F.T.R. 154 — Shore J.
3. Shore J. observed that the Company is not challenging a specific decision of a federal body, as is normally the case in the Federal Court. He stated that the Company is effectively seeking a legal opinion — i.e., declarations about the applicability of the *CTC Act* — and concluded the Federal Court does not have the authority to grant such a remedy. Shore J. held that s. 23(c) of the *Federal Courts Act* merely confers on the Federal Court jurisdiction over certain proceedings: it does not grant any right of appeal or judicial review to any person, nor does it give the Federal Court the authority to give a purely declaratory remedy. Accordingly, Shore J. struck the Company’s notice of application for want of jurisdiction.
   1. Federal Court of Appeal, 2015 FCA 88, [2016] 1 F.C.R. 265 — Dawson, Stratas and Scott JJ.A.
4. Stratas J.A., writing for the court, applied the three-pronged test for determining whether the Federal Court has jurisdiction set out by this Court in *ITO—International Terminal Operators Ltd. v. Miida Electronics Inc.*, [1986] 1 S.C.R. 752, at p. 766. He noted that, under the *ITO* test, the Federal Court has jurisdiction when (1) a statute grants jurisdiction to the court, (2) federal law nourishes the grant of jurisdiction and is essential to the disposition of the case, and (3) that federal law is constitutionally valid.
5. With respect to the statutory grant of jurisdiction, the Federal Court of Appeal concluded that s. 23(c) grants jurisdiction to the Federal Court, empowering parties to seek a declaration “in relation to . . . works and undertakings connecting a province with any other province or extending beyond the limits of a province” (para. 27). Here, the Company is seeking declarations in relation to the Ambassador Bridge, which extends beyond the limits of Ontario.
6. As to the second part of the *ITO* test, “sufficient” federal law is at issue because the Federal Court will have to determine whether the residential properties are part of the works and undertakings regulated by the *CTC Act* — a federal statute — and the extent to which the *CTC Act* itself regulates conflicts between the Company and the City.
7. Finally, the *CTC Act* is constitutionally valid. Thus, the Federal Court of Appeal concluded that all three parts of the *ITO* test are met and the Federal Court has jurisdiction.
8. During oral argument the Federal Court of Appeal raised an additional issue which had not been considered by Shore J. at first instance: whether the Federal Court has the remedial power, when the *ITO* test is met, to declare a law inapplicable by the constitutional doctrine of interjurisdictional immunity or inoperative by the doctrine of paramountcy. This issue is discussed at some length in the reasons; the court ultimately concluded that the Federal Court has the power to make constitutional declarations about the validity, applicability and operability of legislation.
9. Analysis
10. The sole issue is whether the Federal Court has jurisdiction under the *ITO* test to hear the Company’s application. If it is plain and obvious that the Federal Court lacks jurisdiction to hear this application, the motion to strike must succeed (*Hodgson v. Ermineskin Indian Band* (2000),180 F.T.R. 285). First, I identify the essential nature of the Company’s claim. I then review the role and jurisdiction of the Federal Court before applying the *ITO* test for jurisdiction. Given my conclusion that the Federal Court does not have jurisdiction to hear this matter, it is unnecessary to address the issue of whether the court should decline to exercise jurisdiction.
    1. Essential Nature of the Company’s Claim
11. In order to decide whether the Federal Court has jurisdiction over a claim, it is necessary to determine the essential nature or character of that claim (*JP Morgan Asset Management (Canada) Inc. v. Canada (National Revenue)*, 2013 FCA 250, [2014] 2 F.C.R. 557, at para. 50; *Sifto Canada Corp. v. Minister of National Revenue*, 2014 FCA 140, 461 N.R. 184, at para. 25). As discussed in further detail below, s. 23(c) of the *Federal Courts Act* only grants jurisdiction to the Federal Court when a claim for relief has been made, or a remedy has been sought, “under an Act of Parliament or otherwise”. The conferral of jurisdiction depends on the nature of the claim or remedy sought. Determining the claim’s essential nature allows the court to assess whether it falls within the scope of s. 23(c). Jurisdiction is not assessed in a piecemeal or issue-by-issue fashion.
12. The essential nature of the claim must be determined on “a realistic appreciation of the practical result sought by the claimant” (*Domtar Inc. v. Canada (Attorney General)*, 2009 FCA 218, 392 N.R. 200, at para. 28, per Sharlow J.A.). The “statement of claim is not to be blindly read at its face meaning” (*Roitman v. Canada*, 2006 FCA 266, 353 N.R. 75, at para. 16, per Décary J.A.). Rather, the court must “look beyond the words used, the facts alleged and the remedy sought and ensure . . . that the statement of claim is not a disguised attempt to reach before the Federal Court a result otherwise unreachable in that Court” (*ibid.*; see also *Canadian Pacific Railway v. R.*, 2013 FC 161, [2014] 1 C.T.C. 223, at para. 36; *Verdicchio v. R.*, 2010 FC 117, [2010] 3 C.T.C. 80, at para. 24).
13. On the other hand, genuine strategic choices should not be maligned as artful pleading. The question is whether the court has jurisdiction over the particular claim the claimant has chosen to bring, not a similar claim the respondent says the claimant really ought, for one reason or another, to have brought.
14. In its pleadings at the Federal Court, the Company seeks the following relief:

1. A declaration that the Ambassador Bridge, including its approaches, terminal facilities, machinery and appurtenances, is a federal undertaking;

2. A declaration that the applicant The Canadian Transit Company (“CTC”) has, pursuant to its enabling legislation, *An Act to incorporate The Canadian Transit Company*, 11-12 George V., 1921, c. 57, as amended (the “CTC Act”):

(a) the right to purchase, lease or otherwise acquire and hold lands for the Ambassador Bridge and its terminal yards, including its accommodation works and facilities, as CTC thinks necessary in its discretion;

(b) the right to expropriate and take an easement in, over, under or through any lands without the necessity of acquiring a title in fee simple thereto; and

(c) an obligation, as set out in By-Law Number 1606 of The Town of Sandwich (“Sandwich By-Law”), to keep and maintain the Ambassador Bridge and all works connected therewith in good order and condition and of sufficient strength and capacity at all times to sustain and protect such machinery and structures and also the vehicles and traffic that may be carried or allowed thereon;

3. A declaration that, pursuant to paragraphs 1 and 2 above, the Corporation of the City of Windsor By-Law Number 147-2011, titled a By-Law to Establish Standards for the Maintenance and Occupancy of All Property in the City of Windsor and to Repeal By-Law 156-2005 (the “By- Law”), does not apply to properties purchased, leased or otherwise acquired and held by CTC pursuant to its enabling legislation;

4. A declaration that certain properties purchased by CTC which are immediately west of and/or adjacent to the Ambassador Bridge (the “Properties”) are necessary for the continued operation and maintenance of the Ambassador Bridge;

(A.R., vol. I, at pp. 47-48)

1. Although the Company has tied each of these declarations to the *CTC Act*, the main federal legislation involved, it is clear that what the Company ultimately seeks is immunity from the requirements of the By-law. The third declaration — that the By-law does not apply to the properties — is the essence of the Company’s claim. There has been no suggestion by the Company that the other declarations — that the Ambassador Bridge is a federal undertaking, that the Company enjoys certain rights under the *CTC Act*, and that the properties are necessary for the continued operation of the bridge — would be worthwhile pursuing in the absence of the third declaration. Adopting “a realistic appreciation of the practical result sought by the claimant” (*Domtar*, at para. 28), the real issue is whether the Company’s rights under the *CTC Act* are subject to the By-law. The first, second and fourth declarations sought by the Company are valuable to the Company only to the extent they help it establish, by the doctrines of interjurisdictional immunity or paramountcy, that the By-law is inapplicable or inoperative against the Company. In essence, the Company’s claim is simply that it is not required to comply with the By-law and repair the properties as the City has ordered.
2. Stated generally, the issue is whether the Federal Court has jurisdiction to decide a claim that a municipal by-law is constitutionally inapplicable or inoperative in relation to a federal undertaking.
   1. Overview of the Role and Jurisdiction of the Federal Court
3. The role and jurisdiction of the Federal Court appear most clearly when seen through the lens of the judicature provisions of the *Constitution Act, 1867*. Section 96 recognized the superior courts of general jurisdiction which already existed in each province at the time of Confederation. Section 101 empowered Parliament to establish “additional Courts for the better Administration of the Laws of Canada” — i.e., to establish new courts to administer federal law (*R. v. Thomas Fuller Construction Co. (1958) Ltd.*, [1980] 1 S.C.R. 695, at p. 707; *Quebec North Shore Paper Co. v. Canadian Pacific Ltd.*, [1977] 2 S.C.R. 1054, at pp. 1065-66; *Consolidated Distilleries, Ltd. v. The King*, [1933] A.C. 508 (P.C.), at pp. 520-22). Parliament exercised this power in 1875 when it enacted legislation creating the Exchequer Court of Canada, which ultimately became the Federal Court of Canada (see *The Supreme and Exchequer Court Act*, S.C. 1875, c. 11). The Federal Court plays an important role in the interpretation and development of federal law in matters over which it has been granted jurisdiction.
4. The provincial superior courts recognized by s. 96 “have always occupied a position of prime importance in the constitutional pattern of this country” (*Attorney General of Canada v. Law Society of British Columbia*, [1982] 2 S.C.R. 307, at p. 327, per Estey J.). Provincially administered (s. 92(14)) and federally appointed (ss. 96 and 100), they weave together provincial and federal concerns and act as a strong unifying force within our federation. As courts of general jurisdiction, the superior courts have jurisdiction in all cases except where jurisdiction has been *removed* by statute (*Québec Téléphone v. Bell Telephone Co. of Canada*, [1972] S.C.R. 182, at p. 190). The inherent jurisdiction of the superior courts can be constrained by legislation, but s. 96 of the *Constitution Act, 1867* protects the essential nature and powers of the provincial superior courts from legislative incursion (*Ontario v. Criminal Lawyers’ Association of Ontario*, 2013 SCC 43, [2013] 3 S.C.R. 3, at para. 18; *MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 S.C.R. 725, at para. 15).
5. The Federal Court, by contrast, has only the jurisdiction it has been *conferred* by statute.[[1]](#footnote-1) It is a statutory court, created under the constitutional authority of s. 101, without inherent jurisdiction. While the Federal Court plays a critical role in our judicial system, its jurisdiction is not constitutionally protected in the same way as that of a s. 96 court. It can act only within the constitutional boundaries of s. 101 and the confines of its statutory powers.[[2]](#footnote-2) As this Court noted in *Roberts v. Canada*, [1989] 1 S.C.R. 322, at p. 331, “[b]ecause the Federal Court is without any inherent jurisdiction such as that existing in provincial superior courts, the language of the [*Federal Court Act*] is completely determinative of the scope of the Court’s jurisdiction.”
   1. The ITO Test for Jurisdiction
6. This Court held in *ITO* that a statutory grant of jurisdiction is necessary, but not alone sufficient, for the Federal Court to have jurisdiction in a given case. Because Parliament established the Federal Court pursuant to its competence, under s. 101 of the *Constitution Act, 1867*, to establish “additional Courts for the better Administration of the Laws of Canada”, the role of the Federal Court is constitutionally limited to administering “the Laws of Canada”, which in this context means federal law (*Thomas Fuller*, at p. 707; *Quebec North Shore*, at pp. 1065-66; *Consolidated Distilleries*,at pp. 521-22). The three-part *ITO* test for jurisdiction is designed to ensure the Federal Court does not overstep this limited role (*ITO*,at p. 766, perMcIntyre J.):

1. There must be a statutory grant of jurisdiction by the federal Parliament.

2. There must be an existing body of federal law which is essential to the disposition of the case and which nourishes the statutory grant of jurisdiction.

3. The law on which the case is based must be “a law of Canada” as the phrase is used in s. 101 of the *Constitution Act, 1867*.

1. The first part of this test addresses the specific statutory grant of jurisdiction. There is a certain degree of overlap between the second and third aspects of this test, which both address the need to stay within the constitutional limits of s. 101.
   1. ITO Part 1: Statutory Grant of Jurisdiction
2. The first part of the *ITO* test requires that a federal statute grant jurisdiction to the Federal Court.
3. The Federal Court of Appeal found, and the Company submits, that s. 23(c) of the *Federal Courts Act* grants jurisdiction over the Company’s application. I cannot agree.
4. Once again, s. 23(c) reads as follows:

**23** Except to the extent that jurisdiction has been otherwise specially assigned, the Federal Court has concurrent original jurisdiction, between subject and subject as well as otherwise, in all cases in which a claim for relief is made or a remedy is sought under an Act of Parliament or otherwise in relation to any matter coming within any of the following classes of subjects:

. . .

**(c)** works and undertakings connecting a province with any other province or extending beyond the limits of a province.

1. As the text of the provision indicates, s. 23(c) grants jurisdiction to the Federal Court only when three criteria are met:
   * + 1. jurisdiction must not have been “specially assigned” to another court;
       2. the claim for relief must be made, or the remedy must be sought, “under an Act of Parliament or otherwise”; and,
       3. the claim for relief must be made, or the remedy must be sought, “in relation to” a work or undertaking connecting a province with any other province or extending beyond the limits of a province.
2. Only the second criterion is at issue in this appeal. In *Quebec North Shore*, this Court interpreted the phrase “under an Act of the Parliament of Canada or otherwise” (as it read then) to mean under “federal law, whether under stat­ute or regulation or common law” and concluded “[s]ection 23 requires that the claim for relief be one sought under such law” (p. 1066 (emphasis added)). Laskin C.J. reasoned that provisions of the *Federal Court Act* which confer jurisdiction on the Federal Court should not be interpreted as unconstitutionally exceeding Parliament’s competence under s. 101 of the *Constitution Act, 1867* to establish courts for the better administration of federal law (pp. 1057-58).
3. *Quebec North Shore* makes clear that s. 23 grants jurisdiction to the Federal Court only when the claimant is seeking relief under federal law. As I read *Quebec North Shore*, the implication is that the claimant’s *cause of action*, or the right to seek relief, must be created or recognized by a federal statute, a federal regulation or a rule of the common law dealing with a subject matter of federal legislative competence. This is what it means to seek relief “under” federal law in s. 23.
4. In *Roberts*, for example, Wilson J. offered this paraphrase of *Quebec North Shore*: “. . . the cause of action must be founded ‘on some existing federal law, whether statute or regulation or common law’” (p. 339, quoting *Quebec North Shore*, at p. 1066 (emphasis added)).  If the claimant’s cause of action or right to seek relief is not created or recognized by federal law, s. 23 does not confer jurisdiction on the Federal Court.
5. Thus, in *Quebec North Shore* itself, s. 23 did not confer jurisdiction: although the claimants were seeking relief in relation to an extra-provincial undertaking, the claimants were not seeking relief under federal law. Rather, the claimants were seeking relief under the Quebec law of contract. Similarly, in *Norrail Transport Inc. v. Canadian Pacific Ltd.* (1998), 154 F.T.R. 161, which also involved an extra-provincial undertaking, s. 23 did not confer jurisdiction because the causes of action were in the Quebec law of contract and the Quebec law of fault.
6. By contrast, s. 23 did confer jurisdiction in *Prudential Assurance Co. v. Canada*, [1993] 2 F.C. 293 (C.A.), which was a claim for damages brought under the federal *Carriage by Air Act*, R.S.C. 1985, c. C-26. *Bensol Customs Brokers Ltd. v. Air Canada*, [1979] 2 F.C. 575 (C.A.), was another claim for damages under the federal *Carriage by Air Act* in which s. 23 was held to confer jurisdiction*.* The claimants in that case brought a tort claim as well; however, the majority of the Federal Court of Appeal held that s. 23 did not confer jurisdiction over the tort claim.
7. The Federal Court of Appeal in this case did not consider whether the Company was seeking relief under federal law, nor did it refer to *Quebec North Shore*. The court’s paraphrase of s. 23(c) — that it empowers a party to seek a declaration in relation to works and undertakings connecting a province with any other province or extending beyond the limits of a province (para. 27) — suggests it is sufficient if the subject matter of the litigation is an extra-provincial undertaking. This paraphrase does not acknowledge or give any meaning to the requirement that relief be sought “under an Act of Parliament or otherwise”.
8. This phrase cannot be ignored or rendered superfluous. Section 23(c) confers jurisdiction “in all cases in which a claim for relief is made or a remedy is sought under an Act of Parliament or otherwise in relation to [an extra-provincial undertaking]”. If Parliament had intended the Federal Court to have jurisdiction whenever relief is sought in relation to an extra-provincial undertaking, *whether or not that relief is sought under federal law*, it would not have added the qualifier that the relief must be sought “under an Act of Parliament or otherwise”.   The explicit language of s. 23 requires that the relief be sought under — and not merely in relation to — federal law. This is even clearer in the French version of s. 23, which requires relief to be sought “*sous le régime* *d’une loi fédérale ou d’une autre règle de droit*”.
9. The Federal Court of Appeal stated that a broad scope of Federal Court jurisdiction would promote consistency across the country in the interpretation of federal law. However, such an objective does not justify departing from the explicit language of s. 23. I also note that concerns about consistency can cut both ways. The jurisdiction s. 23 confers on the Federal Court is concurrent with the provincial superior courts. Even if this Court accepted that s. 23 granted the Federal Court jurisdiction in cases like this one, litigants could choose to bring their claim in a superior court rather than the Federal Court.
10. Requiring the right to seek relief to arise directly from federal law brings clarity to the scope of the Federal Court’s concurrent jurisdiction. Giving effect to the explicit wording of s. 23 minimizes jurisdictional disputes by ensuring that litigants know the scope of the Federal Court’s jurisdiction in advance. This will avoid unnecessary litigation, including disputes about whether the court should decline to exercise jurisdiction even if it has jurisdiction to hear the matter.
11. In its written submissions, the Company said it was seeking relief “in relation to” the *CTC Act*. In response to a question asked during oral argument, the Company submitted it is seeking relief under s. 23(c) itself, or alternatively under the *CTC Act*.
12. The Company stresses that the *Federal Courts Act* defines “relief” to include declarations. In the Company’s submission, this definition means that s. 23(c) gives parties the right to apply to the Federal Court for declarations about extra-provincial undertakings.
13. This argument cannot be sustained. A definition simply provides the meaning for a term used in the legislation. If Parliament had spelled out the full definition of the defined term “relief” — “every species of relief, whether by way of damages, payment of money, injunction, declaration, restitution of an incorporeal right, return of land or chattels or otherwise” — in s. 23, it would not change the meaning of the words of the provision.
14. Effect must still be given to the words “is sought under an Act of Parliament or otherwise” in s. 23. Had Parliament intended the *Federal Courts Act* to grant jurisdiction to the Federal Court to provide any relief (as defined broadly) in relation to the classes of subjects enumerated in s. 23, it would simply have said so. It would be circular to reason that s. 23 is self-referential: it is not itself a federal law under which the Company can seek relief, however “relief” is defined. Rather, as Shore J. found at first instance, s. 23 confers on the Federal Court jurisdiction over certain claims, including certain claims for declarations, but does not confer on *parties* the right to make those claims in the first place. For that right, parties must look to other federal law.
15. *Prudential Assurance*, for example, was a claim brought under the *Carriage by Air Act*, which creates a cause of action against air carriers for damage to baggage and cargo. The type of relief the plaintiffs were seeking was damages, which, like declarations, falls within the definition of “relief” in the *Federal Court Act*, but nothing in the jurisdictional analysis turned on the type of relief the plaintiffs were seeking. What mattered was that the plaintiffs were seeking relief under federal law: the cause of action was created by the federal *Carriage by Air Act*. It was the federal *Carriage by Air Act* which gave the plaintiffs the right to seek damages from the carrier.
16. Other federal causes of action that might satisfy s. 23 include the *Radiocommunication Act*, R.S.C. 1985, c. R-2, s. 18(1) (a person who has suffered a loss as a result of conduct contrary to certain sections of the Act may, “in any court of competent jurisdiction, sue for and recover damages from the person who engaged in the conduct”), and the *Canada Transportation Act*, S.C. 1996, c. 10, s. 116(5) (a person “aggrieved by any neglect or refusal of a company to fulfil its service obligations has . . . an action for the neglect or refusal against the company”).
17. When a party seeks relief under provisions such as these, s. 23 may grant jurisdiction to the Federal Court, assuming the other requirements of s. 23 are met. But a person cannot seek relief under s. 23 itself. It does not create any right of action. It merely confers on the Federal Court jurisdiction to provide relief that a person can otherwise seek “under an Act of Parliament or otherwise”.
18. The Company further submits that *Strickland v. Canada (Attorney General)*, 2015 SCC 37, [2015] 2 S.C.R. 713, which dealt with a similar provision of the *Federal Courts Act*, requires that s. 23 be read as conferring a right to seek relief. But *Strickland* was argued on the *assumption* that s. 18 of the *Federal Courts Act* conferred on the claimants the right to seek a declaration that certain federal regulations were invalid. (Section 18 confers exclusive jurisdiction on the Federal Court “to issue an injunction, writ of *certiorari*, writ of prohibition, writ of *mandamus* or writ of *quo warranto*, or grant declaratory relief, against any federal board, commission or other tribunal”.) Cromwell J. expressly stated that he was not endorsing the parties’ assumption that s. 18 conferred on the claimants the right to seek the declaration they were seeking (para. 6). The issue in *Strickland* was whether, *assuming* the Federal Court had jurisdiction to make the declaration, it could decline to make the declaration on the ground that it would be more appropriate for the claim to be heard in a provincial superior court. In short, *Strickland* concerned only the scope of the Federal Court’s remedial discretion, not the interpretation of s. 18 — let alone the interpretation of s. 23.
19. The Company’s alternative submission, that it is seeking relief under the *CTC Act*, is similarly unpersuasive. Although the *CTC Act* confers certain rights and powers (and imposes certain responsibilities) on the Company, it does not give the Company any kind of right of action or right to seek the relief sought.
20. The essence of the Company’s position is that the By-law is inapplicable by the doctrine of interjurisdictional immunity or inoperative by the doctrine of paramountcy. The Company is seeking relief under constitutional law, because it is constitutional law which confers on parties the right to seek a declaration that a law is inapplicable or inoperative.
21. A party seeking relief under constitutional law is not seeking relief “under an Act of Parliament or otherwise” within the meaning of s. 23. I agree with the City and the interveners, including the Attorney General of Canada, that constitutional law cannot be said to be federal law for the purposes of s. 23 (see also, e.g., P. W. Hogg, *Constitutional Law of Canada* (5th ed. Supp.), at p. 7-27; B. J. Saunders, D. J. Rennie and G. Garton, *Federal Courts Practice 2014* (2013), at p. 9).
22. The Federal Court of Appeal effectively concluded otherwise in its discussion of the additional issue that court raised, namely whether the Federal Court has the power to make constitutional declarations. The court suggested that the Constitution is one of the “Laws of Canada” referred to in s. 101, as are the constitutional doctrines of interjurisdictional immunity and paramountcy. On this logic, these doctrines would also qualify as federal law for the purposes of s. 23.
23. First, this conclusion is contrary to this Court’s comments in *Northern Telecom Canada Ltd. v. Communication Workers of Canada*, [1983] 1 S.C.R. 733, at p. 745, perEstey J.:

The *Constitution Act, 1867*, as amended, is not of course a “law of Canada” in the sense of the foregoing cases because it was not enacted by the Parliament of Canada. The inherent limitation placed by s. 101, *supra*, on the jurisdiction which may be granted to the Federal Court by Parliament therefore might exclude a proceeding founded on the *Constitution Act*.

This passage is not equivocal on the issue of whether the *Constitution Act, 1867* is one of the “Laws of Canada” denoted by s. 101. Although *obiter*, the comments were intended to provide guidance and should be accepted as authoritative (see *R. v. Henry*, 2005 SCC 76, [2005] 3 S.C.R. 609, at para. 57).

1. Nor did our Constitution became one of the “Laws of Canada” after 1982. In concluding otherwise, the Federal Court of Appeal reasoned that although the enactments which together make up our Constitution were originally enacted or authorized by the Parliament of the United Kingdom, the *Canada Act 1982* (U.K.), 1982, c. 11, ‟patriatedˮ our Constitution in part by providing that the *Constitution Act, 1982* “is hereby enacted for and shall have the force of law in Canada” (s. 1)[[3]](#footnote-3). The *Constitution Act, 1982* in turn empowered Canadians to amend the Constitution (ss. 38 to 49) and referred to the Constitution as the “supreme law of Canada” (s. 52). From this, the Federal Court of Appeal inferred that the enactments which together make up the Constitution became “Laws of Canada” after 1982.
2. However, “Canada” has two distinct meanings in our Constitution. It can denote the country as a whole or the federal level within it. In section 1 of the *Canada Act 1982* and s. 52 of the *Constitution Act, 1982*, “Canada” denotes the country as a whole. As this Court has confirmed on a number of occasions, in s. 101 of the *Constitution Act, 1867*, “Canada” denotes only the federal level (*Thomas Fuller*, at p. 707; *Quebec North Shore*, at pp. 1065-66; *Consolidated Distilleries*, at pp. 520-22). Further, interpreting “Canada” in s. 101 to denote the country as a whole, such that Parliament could create additional courts of general (federal and provincial) jurisdiction, would be inconsistent with the other judicature provisions of the *Constitution Act, 1867*, which take as their “basic principle . . . the jurisdiction of the superior courts of the provinces in all matters federal and provincial” (*Thomas Fuller*, at p. 713). After the 1982 ‟patriationˮ, the Constitution is certainly a law of Canada the country, as opposed to a law of the United Kingdom, but it is not one of the “Laws of Canada”, the federal laws, referred to in s. 101 of the *Constitution Act, 1867*.
3. Obviously, the doctrines of interjurisdictional immunity and paramountcy arise from s. 91 of the *Constitution Act, 1867* and can affect the force of federal legislation. However, these constitutional doctrines can also affect the force of provincial legislation. Surely constitutional law is neither federal nor provincial. The Constitution logically precedes that distinction: it is the Constitution itself that bifurcates Canadian law into federal and provincial matters.
4. In conclusion, the Company is not seeking relief “under an Act of Parliament or otherwise” (i.e., under federal law) as required by s. 23(c) of the *Federal Courts Act*. Section 23(c) therefore does not grant jurisdiction over this application to the Federal Court and the first part of the *ITO* test is not met. There is no statutory grant of jurisdiction. This finding is dispositive: the Federal Court lacks jurisdiction in this case. There is therefore no need to consider whether the second and third parts of the *ITO* test are met in this case.
   1. ITO Part 2: Federal Law Essential to Disposition
5. Nonetheless, the approach taken by the Federal Court of Appeal with respect to the second part of the *ITO* test merits comment.
6. The second part of the *ITO* test requires that federal law be “essential to the disposition of the case” such that it “nourishes the statutory grant of jurisdiction” (p. 766, per McIntyre J.). Indeed, the fact that the claim involves rights and obligations conferred by federal law will be relevant to this question. This requirement is important because it speaks to the constitutional status and role of the Federal Court under s. 101 of the *Constitution Act, 1867*.
7. The Federal Court of Appeal concluded that this part of the test is met because “there [is] sufficient federal law for the Federal Court to have jurisdiction” (para. 32). The reasons refer to a number of articulations by the Federal Court of Appeal of this part of the *ITO* test: *Bensol Customs Brokers*, at pp. 582-83 (whether the outcome is determined “to some material extent” by federal law or the cause of action is “affected” by federal law); *The Queen v. Montreal Urban Community Transit Commission*, [1980] 2 F.C. 151 (C.A.), at p. 153 (whether federal law “has an important part to play” in determining the outcome).
8. These articulations of the test should not be understood to lower in any way the high threshold articulated in *ITO* itself. The fact that the Federal Court may have to consider federal law as a necessary component is not alone sufficient; federal law must be “essential to the disposition of the case”. It must “nourish” the grant of jurisdiction.
   1. Power to Make Constitutional Declarations
9. Since the *ITO* test is not met, it is also unnecessary to consider the Federal Court of Appeal’s holding that the Federal Court has the remedial power to declare legislation to be constitutionally invalid, inapplicable or inoperative. I decline to comment on this issue, except to say this. There is an important distinction between the power to make a constitutional finding which binds only the parties to the proceeding and the power to make a formal constitutional declaration which applies generally and which effectively removes a law from the statute books (see, e.g., *R. v. Lloyd*, 2016 SCC 13, [2016] 1 S.C.R. 130, at para. 15; *Douglas/Kwantlen Faculty Assn. v. Douglas College*, [1990] 3 S.C.R. 570, at p. 592; *R. v. Big M Drug Mart Ltd.*, [1985] 1 S.C.R. 295, at p. 316).
10. The Federal Court clearly has the power, when the *ITO* test is met, to make findings of constitutionality and to give no force or effect in a particular proceeding to a law it finds to be unconstitutional. The Federal Court of Appeal in this case appears to have held that the Federal Court also has the power to make formal, generally binding constitutional declarations. My silence on this point should not be taken as tacit approval of the Federal Court of Appeal’s analysis or conclusion.
11. Disposition
12. Because the *ITO* test is not met, the application is “bereft of any possibility of success” (*JP Morgan*, at para. 47, quoting *David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.*, [1995] 1 F.C. 588 (C.A.), at p. 600). It is plain and obvious that the Federal Court lacks jurisdiction to hear the application. Shore J. did not err in striking the notice of application and the Federal Court of Appeal ought not to have intervened. I would, accordingly, allow the appeal, set aside the order of the Federal Court of Appeal and reinstate the order of Shore J. striking the Company’s notice of application. I would also award costs to the City in this Court and in the courts below.

The reasons of Moldaver, Côté and Brown JJ. were delivered by

1. Moldaver and Brown JJ. (dissenting) — We have read the reasons of our colleague Justice Karakatsanis. With respect, we disagree with the central features of her analysis and with her conclusion. In our view, s. 23(c) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, provides the required statutory grant of jurisdiction, and federal law is essential to the disposition of the case. We would therefore dismiss the appeal and remit the matter to the Federal Court. It remains for the Federal Court to determine whether it should decline to exercise this jurisdiction and stay the proceedings to allow the matter to be litigated in the Superior Court of Justice: see *Federal Courts Act*, s. 50(1).
2. We acknowledge that the jurisdiction of the Federal Court is circumscribed by s. 101 of the *Constitution Act, 1867*. The Federal Court was established for the better administration of the laws of Canada. In our view, recognition of its jurisdiction in this case is consistent with, and advances, that purpose. Put in simple terms, this case involves a federal company, created under a specially enacted federal statute,[[4]](#footnote-4) whose sole function under the statute is to operate a federal undertaking and whose claim for declaratory relief focusses exclusively on its right to carry out its statutory mandate free from unconstitutional constraints imposed by municipal bylaws.
3. Central to the point of divergence between our colleague’s reasons and ours is the distinction between having jurisdiction and taking jurisdiction. To be sure, and as we will explain, there are very good reasons why, in our respectful view, the Federal Court should seriously consider declining jurisdiction in this matter. But that is a question of taking jurisdiction. It is distinct from the question of having jurisdiction.
4. And, in our view, the Federal Court clearly has jurisdiction. Our conclusion is informed by three considerations: (1) a historical overview of the Federal Court’s jurisdiction; (2) the irrelevance of the “essence of the claim” to determine whether the Federal Court has jurisdiction; and (3) the application of all three steps of the *ITO—International Terminal Operators Ltd. v. Miida Electronics Inc.*, [1986] 1 S.C.R. 752, test, namely that s. 23(c) of the *Federal Courts Act* grants jurisdiction; that the *CTC Act* plays an essential role in the outcome of the case; and that the *CTC Act* is valid federal law.
5. The Federal Court’s Jurisdiction Should Be Construed Broadly
6. The history of the Federal Court reveals that it was intended by Parliament to have broad jurisdiction. The Exchequer Court, created in 1875, initially had limited jurisdiction: it could hear certain claims against the Crown, and eventually, claims relating to patents, copyrights, public lands, and railway debts (*The Supreme and Exchequer Court Act*, S.C. 1875, c. 11; *Exchequer Court Act*, R.S.C. 1970, c. E-11, ss. 17 to 30). During the 20th century, however, it became apparent that the Exchequer Court could not deal with many matters that transcended provincial boundaries, and that confusion, inconsistency, and expense tended to accompany litigation of these national matters in the provincial superior courts.
7. These problems prompted Parliament in 1970 to replace the Exchequer Court with the Federal Court, and to expand the Federal Court’s jurisdiction (*Federal Court Act*, S.C. 1970-71-72, c. 1). According to the Minister of Justice, the Federal Court was designed to achieve two objectives: first, ensuring that members of the public would “have resort to a national court exercising a national jurisdiction when enforcing a claim involving matters which frequently involve national elements”; and second, making it possible for “litigants who may often live in widely different parts of the country to [have] a common and convenient forum in which to enforce their legal rights” (*House of Commons Debates*, vol. V, 2nd Sess., 28th Parl., March 25, 1970, at p. 5473).
8. These purposes are better served by a broad construction of the Federal Court’s jurisdiction. We acknowledge that the Federal Court is not without jurisdictional constraints. A broad construction of the Federal Court’s statutory grant of jurisdiction cannot exceed Parliament’s constitutional limits and intrude on provincial spheres of competence. In *ITO*, this Court set out a test for determining the Federal Court’s jurisdiction, of which a statutory grant of jurisdiction forms only a part. It is the second and third elements of the *ITO* test, which we discuss below, that ensure that constitutional limits are respected (*Canada (Human Rights Commission) v. Canadian Liberty Net*, [1998] 1 S.C.R. 626, at paras. 40 and 43). A broad interpretation of a statutory grant of jurisdiction — like s. 23 — is therefore not at risk of placing the Federal Court outside its constitutional constraints. We now turn to the main issue in this case: whether the Federal Court has jurisdiction over the Canadian Transit Company’s application.
9. Identifying the Essential Nature of the Case Is Not Necessary
10. Our colleague considers it necessary, as a preliminary step in the analysis, to characterize the essential nature of the case. With respect, we see no such need. Our jurisprudence, through the test established in *ITO*, already provides a comprehensive framework of analysis for determining whether the Federal Court has jurisdiction — and characterizing the essential nature of the case forms no part of it, nor does it do any work in answering the jurisdictional question presented by this appeal. What matters is only whether there is a statutory grant of jurisdiction, whether federal law is essential to the disposition of the case, and whether the law is validly federal.
11. To be clear, identifying the essential character of a claim is not answering the same question as that posed at the second step of the *ITO* test — whether federal law is essential to the disposition of the case. The “essential nature of the claim” is about the ultimate outcome sought by the claimant — in other words, what is the claim for or all about? The question of whether federal law is essential to the disposition of the case looks more to the analysis — how will the case be decided, and what law will need to be applied? The two questions may yield different answers, and as a result, should be kept distinct.
12. Not only is the characterization exercise unnecessary, it does not belong in the *ITO* test. Rather, the character of the case is relevant to a different question: Where the Federal Court has jurisdiction, should it exercise it? This Court commented on the essential character of the claim in *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62, [2010] 3 S.C.R. 585:

There is always a residual discretion in the inherent jurisdiction of the provincial superior court (as well as in the Federal Court under s. 50(1) of its Act), to stay the damages claim because in its essential character, it is a claim for judicial review with only a thin pretence to a private wrong. [para. 78]

Significantly, this statement went *not* to whether the Federal Court *has* jurisdiction, but to whether it *should exercise* it.

1. Put simply, when faced with a dispute relating to its jurisdiction, the Federal Court must answer two questions: (1) whether it has jurisdiction; and (2) if so, whether to exercise it. Assuming there is a statutory grant of jurisdiction, the Federal Court’s first question turns on the role that federal law will play in the case. If valid federal law plays an essential role, then the Federal Court will have jurisdiction. After all, the Federal Court exists for the better administration of the laws of Canada. It should be able to deal with claims in which the laws of Canada play an essential role in the analysis.
2. As contemplated by this Court in *TeleZone*, however, there may be cases in which — despite the essential role of federal law — the Federal Court should nonetheless consider declining jurisdiction. This is where the claim’s essential character becomes relevant. Even if federal law were essential to the disposition of a given claim, that claim might be, in its essence, a superior court claim, and this essential character would be one factor for the Federal Court to consider in determining whether *to exercise* its jurisdiction. It would not, however, be relevant to, much less determinative of, *the existence* of the Federal Court’s jurisdiction.
3. That said, even if the claim’s essential character were relevant, we do not agree with our colleague’s characterization of it. The relief claimed by the Company takes the form of four declarations: (1) a declaration that the Ambassador Bridge is a federal undertaking; (2) a declaration that the Company has, pursuant to its enabling legislation (the *CTC Act*), the authority to purchase, lease and otherwise acquire lands for the purpose of the Ambassador Bridge; (3) a declaration that, as a result, the impugned *Property Standards By-law*, City of Windsor By-law No. 147-2011, does not apply to the properties purchased, leased, or otherwise acquired and held by the Company pursuant to its enabling legislation; and (4) a declaration that certain properties purchased by the Company are necessary for the continued operation and maintenance of the Ambassador Bridge. Two points follow from this.
4. First, it is a mistake, in our view, to focus as our colleague does on only one of the declarations sought by the Company. Doing so turns the application into a one-sided coin. *Each* of the declarations sought is essential to the Company’s application. In order to decide whether to grant declaration (3) — which our colleague considers to be the essence of the application (para. 29) — a court must consider and decide the questions raised by all other declarations sought. And, since each of those declarations will play a central role in the proceedings, they cannot be ignored in discerning “the essence” of the claim. To be clear, however, we reiterate that “the essence” of a claim, understood as our colleague has stated it, has no relevance to whether the Federal Court has jurisdiction over that claim.
5. Second, in characterizing the essence of the Company’s claim, our colleague, at least implicitly, impugns the Company’s motives (since she says that none of the other declarations “would be worthwhile pursuing in the absence of the third declaration” (para. 29)). It is helpful, however, to consider the City’s response to the relief sought by the Company. The City is not alleging that the application is frivolous, vexatious, or an abuse of process. Rather, the City has brought a motion to strike, alleging it is plain and obvious that the Federal Court lacks jurisdiction to hear the Company’s application. Even assuming, therefore, that the Company’s motives in bringing the application are discernible, such motives are, in the context of this jurisdiction inquiry, irrelevant.
6. We turn now to the application of the *ITO* test to this case.
7. The *ITO* Test Is Met
8. The test to determine whether the Federal Court has jurisdiction was established by this Court in *ITO*.The *ITO* test has three branches: (1) there must be a statutory grant of jurisdiction to the Federal Court; (2) federal law must be essential to the disposition of the case; and (3) the law at issue must be validly federal.
9. We will deal first with the statutory grant of jurisdiction to the Federal Court, which in our view, is made out under s. 23(c) of the *Federal Courts Act*. We then explain why federal law — namely, the *CTC Act* — is essential to the disposition of the Company’s application. And because the *CTC Act* is valid federal law, the third branch of the *ITO* test is met here as well.
   1. Section 23(c) of the Federal Courts Act Grants Jurisdiction
10. Our colleague concludes that the first branch of the *ITO* test is not met because there is no valid statutory grant of jurisdiction. With respect, we do not agree. In our view, the Company has pleaded sufficient jurisdictional facts to establish that relief is sought “under an Act of Parliament”. It follows that s. 23(c) of the *Federal Courts Act* provides the necessary statutory grant of jurisdiction.
11. There are three crucial elements for s. 23(c) to amount to the required statutory grant of jurisdiction under the first branch of the *ITO* test: (1) there must be a “claim for relief” or a “remedy . . . sought”; (2) the relief or remedy claimed must be “under an Act of Parliament or otherwise”; and (3) it must be claimed “in relation to any matter coming within . . . the following classes of subjects [namely] works and undertakings connecting a province with any other province or extending beyond the limits of a province” (*Federal Courts Act*, s. 23). The City does not contest that the Company has claimed relief (thus meeting s. 23(c)’s first element), and that its claim is in relation to a work or undertaking extending beyond the limits of a province — namely the Ambassador Bridge, connecting Canada with the United States (relating to the third element of s. 23(c)). The only issue in terms of the statutory grant of jurisdiction is whether this claim was made “under an Act of Parliament or otherwise in relation to” this international work or undertaking, which is necessary to meet the second element of s. 23(c) of the *Federal Courts Act*. In our view, the Company’s claim satisfies this requirement.
12. Our colleague concludes that s. 23(c) only confers jurisdiction where “the claimant is seeking relief under federal law” (para. 41). In her view, if the “cause of action or right to seek relief is not created or recognized by federal law”, then s. 23(c) does not confer jurisdiction on the Federal Court (para. 42). With respect, we do not agree with such a narrow reading of this provision.
13. In our view, a federal statute need not expressly create a cause of action for jurisdiction to exist under s. 23(c). A claim is made under an Act of Parliament for the purpose of s. 23 “when that statute is the law which, assuming the claim to be well founded, would be the source of the plaintiff’s right” (*Bensol Customs Brokers Ltd. v. Air Canada*, [1979] 2 F.C. 575 (C.A.), at p. 579). It is sufficient if the relief sought is intimately related to rights and obligations conferred by an Act of Parliament, even if the relief ultimately flows from a different legal source. As such, if the claim for relief is related to a federal work or undertaking and the rights that the claimant seeks to enforce arise from an Act of Parliament, then s. 23(c) confers a statutory grant of jurisdiction on the Federal Court.
14. For example, in *Canadian Pacific Ltd. v. United Transportation Union*, [1979] 1 F.C. 609 (C.A.), the Federal Court of Appeal found that the first portion of s. 23 was satisfied in a claim relating to labour relations in an interprovincial work or undertaking because the claim was “brought in respect of collective agreements deriving their legal character from the *Canada Labour Code*” (p. 619). Similarly, in *Bensol Customs Brokers*, the Federal Court of Appeal also held that s. 23 was satisfied, where the plaintiff acquired its cause of action by subrogation — a doctrine governed by provincial law — because the *Carriage by Air Act*, R.S.C. 1985, c. C-26,was the source of the defendant’s liability. In other cases, the Federal Court has found jurisdiction where an Act of Parliament confers a right or obligation on an entity and the entity (or another party) seeks to enforce that right or obligation (see, e.g., *Federal Liberal Agency of Canada v. CTV Television Network Ltd.*, [1989] 1 F.C. 319 (T.D.) (jurisdiction to grant an interlocutory injunction existed due to a statutory obligation imposed on the defendant)).
15. Requiring a federal statute to expressly create a cause of action before jurisdiction may be founded under s. 23 is, in our view, unduly narrow and inconsistent with Parliament’s intent in creating the Federal Court. It is unduly narrow because all laws define rights, obligations, and liabilities, which are enforceable by the courts regardless of the degree of detail Parliament chose to use in spelling them out (S. A. Scott, “Canadian Federal Courts and the Constitutional Limits of Their Jurisdiction” (1982), 27 *McGill L.J.* 137, at p. 186). The Federal Court has jurisdiction to enforce federally created rights or obligations in a claim relating to an international work or undertaking — and the jurisdiction of the court does not hinge on express language conferring remedies by which those rights or obligations may be enforced. Once these rights and obligations arise from a federal statute, a claim that seeks to enforce them is one that is made “under” that federal statute for the purpose of s. 23.
16. This broad interpretation is also consistent with Parliament’s original purpose in enacting s. 23, which was to provide a national forum that could adjudicate on national issues. Taking an unduly restrictive interpretation of the phrase “under an Act of Parliament” frustrates this purpose, as it will inevitably require claimants to go to provincial superior courts to enforce some of their federally created rights and obligations, while others may be enforced in the Federal Court.
17. Our colleague asserts that a broad reading of s. 23 would lead to increased litigation over jurisdictional issues (para. 48). We respectfully disagree. A broad reading of s. 23 *avoids* jurisdictional disputes by allowing for sufficient overlap between the Federal Court and superior courts. Claimants can simply choose the court that is more likely to give them quicker and less expensive justice. Conversely, a narrow construction of s. 23 would lead to jurisdictional disputes. It would add unnecessary complexity to litigation, along with attendant delays and costs while the litigants do battle over whether their case falls within or outside the concurrent jurisdiction of the federal and superior courts. These concerns are particularly acute, since a narrow reading of the Federal Court’s concurrent jurisdiction may result in some issues being litigated in a superior court, while others are litigated in the Federal Court, leading to the conundrum described in *Pacific Western Airlines Ltd. v. The Queen*, [1979] 2 F.C. 476 (T.D.):

The plaintiffs, if they wish to continue against all defendants, must pursue their remedy in more than one court. Multiplication of proceedings raises the spectre of different results in different courts. The plaintiffs then face the question, in respect of the defendants, other than the Crown: the court of which province, or perhaps more than one province? . . .

The situation is lamentable. There are probably many other persons who have claims arising out of this air disaster. The jurisdictional perils must be, to all those potential litigants, mystifying and frightening. [p. 490]

Therefore, s. 23 should be construed broadly to ensure that, if the claim for relief is related to a federal work or undertaking and the rights being enforced arise from an Act of Parliament, the claimants may approach the Federal Court.

1. In this case, the rights the Company seeks to enforce are sourced in two separate Acts of Parliament, both of which are essential to the ultimate relief sought by the Company.
2. The first declaration claimed by the Company seeks to establish that the Ambassador Bridge is a federal work or undertaking. The *CTC Act* and the *International Bridges and Tunnels Act*, S.C. 2007, c. 1, are the source of the Company’s right in this respect: s. 2 of the *CTC Act* declares the works and undertakings of the Company to be “for the general advantage of Canada”, while s. 5 of the *International Bridges and Tunnels Act* states that all “[i]nternational bridges and tunnels are declared to be works for the general advantage of Canada.”
3. The second and fourth declarations relate to the Company’s power to purchase, lease, and maintain land for the general maintenance of the Ambassador Bridge. This power is sourced in s. 8(*e*) of the *CTC Act*, which states:

**8.** Subject to the provisions of *The Railway Act, 1919*, and of the *Navigable Waters’ Protection Act*, the Company may, —

. . .

(*e*) and the Company may purchase, lease or otherwise acquire and hold lands for the bridge, tracks, terminal yards, accommodation works and facilities, and construct and erect and maintain buildings and other structures required for the convenient working of traffic to, from and over the said bridge, and for said lines of railway as the Company thinks necessary for any of the said purposes;

1. The third declaration seeks to establish that municipal bylaws are inapplicable to the impugned properties. It is true, of course, that the ultimate source of the Company’s right to the relief sought in the third declaration is the constitutional doctrine of interjurisdictional immunity,[[5]](#footnote-5) but its right to the relief claimed is equally tied to the *CTC Act* and to the *International Bridges and Tunnels Act*. The Company’s right to acquire the properties and maintain the bridge, if proven, arises out of the *CTC Act*. And the status of the Ambassador Bridge as a federal work or undertaking arises out of the *International Bridges and Tunnels Act*. These provisions are the statutory source of the Company’s right to claim relief from the alleged unconstitutional application of municipal bylaws to its properties.
2. The entire purpose of the constitutional relief sought by the Company is to allow it to exercise the rights conferred on it by Parliament without impairment — in other words, to restore the proper constitutional state of affairs. In our view, all four declarations sought by the Company are sufficiently tied to rights and obligations conferred by federal statutes to meet the requirement under s. 23(c), that the claim for relief be brought “under an Act of Parliament”. There is, therefore, no basis to strike the claim in this regard.
3. In concluding our analysis on s. 23, we note that the parties’ submissions also touched upon the “or otherwise” portion of s. 23 (“under an Act of Parliament or otherwise”). This was interpreted by Laskin C.J. in *Quebec North Shore Paper Co. v. Canadian Pacific Ltd.*, [1977] 2 S.C.R. 1054, at pp. 1065-66, as requiring “applicable and existing federal law” in order to ground the Federal Court’s jurisdiction thereunder and to properly confine it to the bounds of s. 101 of the *Constitution Act, 1867*. While it is not necessary for us to decide whether this furnishes an additional basis for concluding that the Company’s claim for declaratory relief satisfies s. 23, we simply observe that the subsisting authority of *Quebec North Shore* on this point is not obvious, since Laskin C.J.’s concern for “applicable and existing federal law” is now addressed by the second and third elements of the *ITO* test. Further, Laskin C.J.’s interpretation relied in part on his analysis of the French version of s. 23 and in particular of the French version of “or otherwise”, which has been amended from “*ou autrement*” to “*ou d’une autre règle de droit en matière*” — which also suggests that *Quebec North Shore*’s gloss on s. 23 is now otiose.
   1. The CTC Act Plays an Essential Role in the Outcome of the Case
4. The second step of the *ITO* test is satisfied if there is “an existing body of federal law which is essential to the disposition of the case and which nourishes the statutory grant of jurisdiction” (*ITO*,at p. 766). As we have explained above, the second step of the *ITO* test serves to ensure that the Federal Court does not overstep its constitutionally limited role, as per s. 101 of the *Constitution Act, 1867.* In our view, federal law, namely the *CTC Act*, plays a central role in the disposition of this case, and the Federal Court has jurisdiction over this claim.
5. The Federal Court, the Federal Court of Appeal and this Court have used different expressions when determining whether the role of federal law supports a finding of federal jurisdiction. Writing for the Federal Court of Appeal in this case, Stratas J.A. summarized them as follows (2015 FCA 88, [2016] 1 F.C.R. 265, at para. 39):

Different cases use different words and approaches to describe the degree of federal law that is sufficient. *ITO—International Terminal Operators*, above, inquires into whether provincial law is only “incidentally necessary” to the federal law in the case (at pages 781-782). Other authorities start with the federal law and ask whether it bears upon the case. For example, one formulation is whether “the rights and obligations of the parties are to be determined to some material extent by federal law” or whether the cause of action “is one affected” by federal law: *Bensol Customs Brokers Ltd. v. Air Canada*, [1979] 2 F.C. 575 (C.A.), at page 583. Yet another formulation is whether “the federal statute has an important part to play in determining the rights of the parties”: *R. v. Montreal Urban Community Transit Commission*, [1980] 2 F.C. 151, (C.A.), at page 153.

At bottom, the court must determine whether federal law will play a primary role in the outcome of the case. Where federal law provides an essential framework for the application of provincial law, the Federal Court “may apply provincial law incidentally necessary to resolve the issues” (*ITO*, at p. 781; F.C.A. reasons, at paras. 37 and 40).

1. It is not, of course, the case that any dispute involving an undertaking that extends beyond the borders of a province, no matter how tangentially, will fall within the jurisdiction of the Federal Court. For example, no one would suggest that proceedings involving a minor offence under the *Highway Traffic Act*, R.S.O. 1990, c. H.8, would fall within the Federal Court’s jurisdiction simply because the offence occurred on the Ambassador Bridge. There would be no federal law essential to the disposition of such a case. The dispute before us, however, is not merely tangentially related to federal law.
2. Two interrelated questions are at the heart of this dispute, both of which are intimately tied to the *CTC Act*: First, do the properties purchased by the Company form part of the “federal work or undertaking” of the Ambassador Bridge? If not, the Company’s claim will fail because the properties are not subject to any immunity from local regulation that the Company and the Ambassador Bridge may enjoy. If the properties do form part of the federal work or undertaking, then a second question arises: Are those properties immune from the municipal bylaw based on the doctrine of interjurisdictional immunity?
3. The first question revolves around the scope of federal jurisdiction over federal works and undertakings. It is the body of law relating to this general area of jurisdiction that will resolve the dispute. The second question alludes to the doctrine of interjurisdictional immunity. Where relief is claimed under this constitutional doctrine relating to a federal work or undertaking, federal law will be essential to the disposition of the case.
4. Interjurisdictional immunity protects the exclusivity of certain powers from interference by the other level of government. It was originally developed “to protect federally incorporated companies from provincial legislation affecting the essence of the powers conferred on them as a result of their incorporation” (*Canadian Western Bank v. Alberta*, 2007 SCC 22, [2007] 2 S.C.R. 3, at para. 39, per Binnie and LeBel JJ.). Interjurisdictional immunity precludes “the application of provincial statutes to the specifically federal aspects” of federal works or undertakings where the application of those laws would impair the specifically federal aspect (i.e. the core) of that work or undertaking (*Commission de transport de la Communauté urbaine de Québec v. Canada (National Battlefields Commission)*, [1990] 2 S.C.R. 838, at p. 852, per Gonthier J.).
5. The *CTC Act*, an indisputably valid federal statute, is essential to the disposition of this case, because it is central to the constitutional claim. Thus, the *CTC Act* satisfies the second requirement of the *ITO* test.
6. The *CTC Act* is the constituent statute of the Company, and as such, it determines the rights and obligations of the Company. Sections 2 and 8 of the *CTC Act* are particularly important for the disposition of this case. As indicated, s. 2 declares the Company’s works and undertakings “to be for the general advantage of Canada”. Section 8 establishes the powers of the Company. These powers include the powers to “construct, maintain and operate a railway and general traffic bridge”, to “purchase, lease or otherwise acquire and hold lands for the bridge”, and to “expropriate and take an easement in, over, under or through any lands without the necessity of acquiring a title in fee simple thereto”. Finally, s. 5 of the *International Bridges and Tunnels Act* states that all international bridges and tunnels “are declared to be works for the general advantage of Canada”. The Company relies principally on these sections to found its claim.
7. The declarations sought by the Company make clear that the dispute is generally concerned with the *CTC Act* and federal jurisdiction over federal works and undertakings, pursuant to s. 92(10)(*a*) and s. 92(10)(*c*) of the *Constitution Act, 1867*. The first declaration pertains to the scope of the Company’s federal undertaking as governed by the *CTC Act*. The second declaration relates to the extent of the Company’s rights to acquire land under the *CTC Act*. The third declaration is about the applicability of bylaws to properties acquired and held by the Company (utilizing its rights under the *CTC Act*); and the fourth declaration seeks to establish that certain properties purchased by the Company are necessary for the continued operation and maintenance of the Ambassador Bridge. Determining whether to grant the declarations sought by the Company will primarily entail interpreting the *CTC Act* in order to resolve the constitutional claims. The Federal Court would first need to determine whether the Windsor properties are part of the Company’s bridge undertaking. The terms of the bylaw will not be relevant unless and until it is found that the properties do form part of the Ambassador Bridge project and therefore form part of a federal work or undertaking. Even then, the court would only have to consider the terms of the bylaw to determine whether they impair the vital or essential part of the federal work or undertaking. In sum, from beginning to end, the *CTC Act* plays an essential role in the outcome of this case, while the bylaw only plays a subsidiary or incidental role.
8. This Court’s judgment in *Rhine v. The Queen*, [1980] 2 S.C.R. 442, dealt with two appeals and supports our conclusion. This Court held that contractual claims regarding, in one case, an advance payment made under a federal Act to assist grain producers and, in the other, a student loan, could be heard in the Federal Court because both the advance payment and the loan were governed by a federal statute. The sources of the rights were the contracts — a matter of provincial law — rather than the statutes, but the statutes created a detailed framework that governed the advance payment and the loan. Likewise, here, although the source of the relief may be anchored in constitutional law, the *CTC Act* provides a framework for the rights and obligations of the Company.
9. The dispute before us relies principally on federal law. We recognize that the *CTC Act* is not the *only* law at issue in this dispute; the Federal Court will also have to consider constitutional law and, very probably, municipal law. However, the *CTC Act* is essential to the disposition of this case, and it nourishes the statutory grant of the Federal Court’s jurisdiction, satisfying the second step of the *ITO* test.
   1. The CTC Act Is Valid Federal Law
10. Having concluded that the Federal Court has statutory jurisdiction pursuant to s. 23(c) and that the *CTC Act* is a federal law that plays an essential role in the disposition of the case, the third branch of the *ITO* test requires us to consider whether the *CTC Act* is valid federal law. There is no dispute in this case that it is. The third branch of the *ITO* test is satisfied here.
11. However, we agree with the observations of Stratas J.A. at the Federal Court of Appeal, who suggested that this element is somewhat duplicative of the second because “the two branches together address a single concept”, i.e. whether the Federal Court has constitutional jurisdiction over a particular case (para. 21). In our view, the first and second elements do the heavy lifting in the analysis, and it may be worth considering in a future case whether the test for Federal Court jurisdiction should be simplified to account for this. However, it is not necessary to do so in this case, as all of the elements of the *ITO* test are established here.
12. Conclusion
13. We end where we began. This case involves a federal company, created under a specially enacted federal statute, whose sole function under the statute is to operate a federal undertaking and whose claim for declaratory relief focusses exclusively on its right to carry out its statutory mandate free from unconstitutional constraints imposed by municipal bylaws. As the Federal Court of Appeal concluded, the Federal Court has jurisdiction to hear the Company’s application. We are satisfied that the *ITO* test is met: there is a statutory grant of jurisdiction under s. 23(c) of the *Federal Courts Act*, and valid federal law is essential to the disposition of the case. It follows that we would dismiss the appeal, with costs to the Company.
14. That is the end of the matter so far as this Court is concerned. It remains for the Federal Court to decide whether it should exercise its jurisdiction to hear the Company’s application, or decline to do so in favour of the Superior Court (see *Strickland v. Canada (Attorney General)*, 2015 SCC 37, [2015] 2 S.C.R. 713, at paras. 37-38; *Federal Courts Act*, s. 50(1)). Whether the Superior Court would be a more appropriate forum for the resolution of the issues raised in this application was not argued before us. But the parties do not dispute that the Superior Court also has the jurisdiction to decide these issues.
15. In deciding whether to exercise its jurisdiction, the Federal Court should consider the factors set out by this Court in *Strickland*, including whether the Company has an adequate and effective recourse in a forum in which litigation is already taking place, expeditiousness, and the economical use of judicial resources (para. 42). Three observations in this regard are apposite. First, the applications judge commented that the Superior Court — where proceedings were already commenced (albeit four months after the Company had already filed its application for declaratory relief in the Federal Court) and over which the City had carriage — offered the Company an adequate alternative forum (2014 FC 461, 455 F.T.R. 154, at para. 21). In this vein, we find it significant that the arguments that the Company wishes to make in support of its claim — namely, that the City’s bylaws are inapplicable pursuant to the doctrine of interjurisdictional immunity — could have been made in the context of those proceedings. Second, as the intervener the Attorney General of Canada submitted, the interests of justice are not well served by permitting parties to bring multiple proceedings before different courts seeking identical relief. And finally, the Superior Court may well furnish a not merely adequate but more effective forum to dispose of this case than the Federal Court, because it will involve the application of municipal law, in which the Superior Court has considerable institutional experience.
16. In short, there may be good reason for the Federal Court to decline to hear the Company’s application. Indeed, it would be open to the Federal Court to question the value of this separate application, given the delay and increased cost it has brought to the litigation between the City and the Company.

The following are the reasons delivered by

1. Abella J. (dissenting) — I agree with Justice Karakatsanis about the role and jurisdiction generally of the Federal Court. With great respect, however, like Justices Moldaver and Brown, in my view this Court’s test in *ITO—International Terminal Operators Ltd. v. Miida Electronics Inc.*, [1986] 1 S.C.R. 752, has been met. The Canadian Transit Company’s application is grounded in *An Act to incorporate The Canadian Transit Company*, S.C. 1921, c. 57. This is an “an Act of Parliament” as referred to in s. 23 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, thereby satisfying the first branch of the *ITO* test. The second branch is satisfied because the interpretation of this federal law is essential to the disposition of the case. And the third branch is satisfied because *An Act to incorporate The Canadian Transit Company*,asan act of the federal Parliament, is clearly a “law of Canada”.
2. But notwithstanding that the Federal Court has concurrent jurisdiction with the Ontario Superior Court of Justice, it should not, in my respectful view, exercise it in this case. Unlike Justices Moldaver and Brown, therefore, I would not remit the matter to the Federal Court to determine whether it should decline to exercise its jurisdiction and grant a stay.
3. A stay is authorized where the claim is proceeding in another court or where it is in the interests of justice to do so (s. 50(1) of the *Federal Courts Act*). This discretion to order a stay is guided by the principle of securing “the just, most expeditious and least expensive determination of every proceeding on its merits” (rule 3 of the *Federal Courts Rules*, SOR/98-106; *Coote v. Lawyers’ Professional Indemnity Co*., 2013 FCA 143, at para. 12 (CanLII); see also *Strickland v. Canada (Attorney General)*, [2015] 2 S.C.R. 713, at paras. 42-43). On the facts of this case, this leads to the inevitable conclusion that there should be a stay.
4. Those facts are that on October 9, 2013, the Canadian Transit Company appealed the repair orders imposed by the City of Windsor on September 24, 2013, to the Property Standards Committee. The appeal was scheduled to be heard on October 28, 2013. On October 15, 2013, the Canadian Transit Company filed its application for declaratory relief at the Federal Court. It continued nonetheless to participate in the appeal proceedings before the Property Standards Committee.
5. On November 1, 2013, the Property Standards Committee released its appeal decision modifying 83 of the City’s repair orders to permit demolition as requested by the Canadian Transit Company. On November 14, 2013, the City of Windsor appealed these demolition orders. The Committee deferred the hearing of the appeals dealing with the remaining 31 properties pending settlement discussions between the Canadian Transit Company and the City of Windsor. Those discussions were unsuccessful.
6. On January 28, 2014, the Property Standards Committee informed the parties that it was upholding the original repair orders for the 31 properties. On February 10, 2014, the Canadian Transit Company appealed the Committee’s decision upholding these 31 repair orders.
7. Both the Canadian Transit Company’s appeal of the 31 repair orders and the City’s appeal of the 83 demolition orders were to the Ontario Superior Court. The appeals were scheduled to be heard on April 7 and April 8, 2014.
8. Rather than wait for the outcome of the appeals before the Superior Court, the Canadian Transit Company sought to activate the Federal Court’s intervention it had initiated on October 15, 2013.
9. It cannot be seriously contested that the issues raised by the Canadian Transit Company in its Federal Court application can be resolved in the context of the parties’ ongoing litigation before the Superior Court. The result of diverting the course of the proceedings into a jurisdictional side-show is obvious — additional expense and delay in aid of nothing except avoiding a determination of the merits for as long as possible. To date, that jurisdictional diversion has cost the public a delay of three years. There is no basis for further delaying the Superior Court proceedings. In the words of the Federal Court’s rules, it is neither “just” nor “expeditious” for it to weigh in on these proceedings, needlessly complicating and extending them. Remitting the matter to the Federal Court to reach the irresistible conclusion that a stay is warranted adds needlessly to the expense and delay.
10. I would therefore dismiss the appeal in part and direct that a stay of the Federal Court proceedings be entered.

*Appeal allowed with costs,* Abella*,* Moldaver*,* Côté *and* Brown JJ. *dissenting.*

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

Solicitors for the intervener the Federation of Canadian Municipalities: Federation of Canadian Municipalities, Ottawa; Supreme Advocacy, Ottawa.

1. This includes powers which, although not expressly conferred by statute, are “necessarily implied in the [statutory] grant of power to function as a court of law”, such as the power to control the court’s processes (*R. v. Cunningham*, 2010 SCC 10, [2010] 1 S.C.R. 331, at para. 19, per Rothstein J.). [↑](#footnote-ref-1)
2. Although the *Federal Courts Act* describes the Federal Court as a “superior court” (ss. 3 and 4), this description means only that its jurisdiction is “supervisory” (*Commonwealth of Puerto Rico v. Hernandez*, [1975] 1 S.C.R. 228, at p. 233, perPigeon J.). The Federal Court is not a superior court in the true sense of possessing inherent jurisdiction. [↑](#footnote-ref-2)
3. see Erratum to be published at [2017] 1 S.C.R. iv [↑](#footnote-ref-3)
4. *An* *Act to incorporate The Canadian Transit Company*, S.C. 1921, c. 57 (“*CTC Act*”). [↑](#footnote-ref-4)
5. Before this Court and the Federal Court of Appeal, the Company also raised the constitutional doctrine of paramountcy. However, the Company’s notice of application before the Federal Court does not clearly raise paramountcy concerns. Accordingly, we have limited our analysis here to interjurisdictional immunity. That said, our conclusions would not change if a paramountcy argument formed part of the Company’s application. [↑](#footnote-ref-5)