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COMER

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CONTENTS



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# Two Canadians and a Canadian Economic Think Tank Confront the Global Financial Powers in the Canadian Federal Court

*The Canadians plead for declarations that would restore the use of the bank of Canada for the benefit of Canadians and remove it from the control of international private entities whose interests and directives are placed above the interest of Canadians and the primacy of the constitution of Canada.*

*Canadian constitutional lawyer, Rocco Galati, on behalf of Canadians William Krehm, and Ann Emmett, and COMER (Committee for Monetary and Economic Reform) on December 12, 2011, filed an action in Federal Court, to restore the use of the Bank of Canada to its original purpose, by exercising its public statutory duty and responsibility. That purpose includes making interest free loans to municipal/provincial/federal governments for "human capital" expenditures (education, health, other social services) and /or infrastructure expenditures.*

*The action also constitutionally challenges the government's fallacious accounting methods in its tabling of the budget by not calculating nor revealing the true and total revenues of the nation before transferring back "tax credits" to corporations and other taxpayers.*

*The following is the transcript of the proceedings that took place at the Federal Judicial Centre on December 5, 2012.*

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Court File No. T-2010-11
Federal Court of Canada
Between:
Committee for Monetary and Economic Reform ("COMER"), William Krehm and Ann Emmett, Plaintiffs
– and –
Her Majesty the Queen, the Minister of Finance, The Minister of National Revenue, the Bank of Canada, the Attorney General of Canada, Defendants

Proceedings heard before the Honourable Mr. Justice Aalto in the Courts Administration Service, Federal Judicial Centre, 180 Queen Street West, Toronto, Ontario, Courtroom 4A, on Wednesday, December 5, 2012, at 10:48 am.

Excerpt of Submissions by Mr. Galati

Appearances: Mr. Rocco Galati for the Plaintiffs; Mr. Peter Hajecek and Mr. David Tortel for the Defendants. Also present: Ms. Shirley Aciro, Court Registrar; Mr. Joe Mischuk, Usher

Upon commencing Mr. Galati's Submissions on Wednesday, December 5, 2012, at 10:48 a.m.

MR. GALATI: What I propose to do – it's okay if I refer to you as Mr. Aalto?

JUSTICE AALTO: Yes.

MR. GALATI: Or your honour? What I am going to do is take the first hour of

*Continued on page 2*

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Italian Bank *from page 1*

my time to line up the ducks, because my friend and I, we thought we would be a bit informal. We go back to our days in the Department of Justice together. We are actually friends not in the court sense, but we have known each other for over 20 years.

What my friend has done is, with respect, confused the issues here, and I need to take you through some general observations and principles on constitutional law before I take my second hour to respond to my friend this morning.

JUSTICE AALTO: Fair enough.

MR. GALATI: In taking you through those general principles, they will in part answer some of my friend's arguments, but not necessarily in totality. I think it's very important that I do that. Those of us who went to law school before the Charter came in –

JUSTICE AALTO: That includes me.

MR. GALATI: – yes – are fixated on this notion of parliamentary supremacy. There is no parliamentary supremacy left in Canada; it is a constitutional supremacy. That's clear. So the buck stops at the Constitution. Parliament can do anything except transgress the Constitution. That was true even pre-Charter, on certain underlying constitutional principles.

But before we get there, I am going to start with my general observations on the claim. I am doing this so I can globalize my submissions.

The first one is the general observation that my friend keeps saying he's got no facts; he's got evidence; he's got opinion. This court has said very clearly that the line on a pleading between facts and evidence is not a distinct one, so one should avoid marrying, on a motion to strike, the actual distinction between fact and opinion. Where two people agree on an opinion it becomes a fact for the purposes of a motion to strike. Where they disagree, it's arguably an opinion.

The first case I would like to take you to, and my stuff is all in green, volume 1, is the Liebmann case by Madam Justice Reid, which is tab 45. This will be volume 2. You will find that passage at page 11, paragraph 20. On the motion before her, Madam Justice Reid stated at paragraph 20:

"The line between pleading facts and pleading evidence is not a distinct one. I can see no prejudice to the defendants, arising in this case, as a result of the plaintiff setting out the facts on which he relies in the terms and with the specificity noted above. I do not see that this makes the drafting of a defence more complex or difficult. Indeed, it may have obviated the procedural step of seeking particulars."

The second general observation is found at volume 1, tab 25. My friend also does in his submissions what the Federal Court of Appeal said one should not do on a motion to strike. That is the Arsenault case at tab 25. My friend wants to reconfigure the claim to his binoculars, and the Court of Appeal said you don't do that, either in terms of facts or jurisdiction. You take the claim as pleaded. That is at paragraphs 8 to 10 of that case, from the Federal Court of Appeal.

JUSTICE AALTO: I understand that, but there is the caveat to that proposition that if the alleged fact is – let me simplify it – so outrageous that it should not be accepted, then just because it in there doesn't mean you start from accepting that as a basis upon which this claim may survive.

MR. GALATI: I agree, but it doesn't mean that if a fact is complicated or difficult to prove –

JUSTICE AALTO: Oh no, I agree with that submission.

MR. GALATI: – it's not a fact. It's not a fact. I am with you there, your honour. However, what one cannot do, as my friend has done in his factum – used the exact same words saying the essence of the claim is this; the essence of the claim is that – no, no. The claim is what it is, as it is set out; not as my friend would like to see it. That is very important. It's not how Parliament, for instance, debates. It's about the constitutional requirement. In the speech from the throne, as an example, which is not just pageantry, but the Queen cannot have her money until she walks into Parliament and tells us what she is going to do with the money in that session. Part of that is we need to know how much money you have, how much we have to spend and why. That is taxation with representation, and I will get to that later. So my friend can't requalify that argument to say it's about internal debate procedure in Parliament. That is not what it is at all. The second general observation I want to make, and this is important with respect to all of my friend's arguments, is that this action in the main, if you read paragraph 1(a), is for declaratory relief.

JUSTICE AALTO: Mm – hmm.

MR. GALATI: There are facts pled during the factual component of the claim that go to the action or non-action of federal actors for which – which are set out there as factual context to the declaratory relief, but this action in essence, apart from B, is purely

an action for declaratory relief.

Underlying the declaration sought, whether they be on the interpretation of the *Bank of Canada Act* provisions, or on the executive, the minister of finance's requirements in the budgetary process, but even the statutory interpretation declarations we seek are underlined by ultra vires, unconstitutional actions by federal state actors of the executive. And so what we have is an action for declaratory relief with respect to statutory provisions and the conduct of the executive actors who are statutorily and constitutionally charged with executing their duties under that federal statutory regime.

And so if I can refer you to tab 4 of my authorities in volume 1, rule 64 of the Federal Court rules. And that reads:

"No proceeding is subject to challenge on the ground that only a declaratory order is sought, and the Court may make a binding declaration of right in a proceeding whether or not any constitutional relief –"

JUSTICE AALTO: That is the Khadr case.

MR. GALATI: – and so consequential relief is – that's right, and I am going to get to Khadr later. So there is jurisdiction, not only under the rules for the declaration, but also under the act under section 17(5)(b). You will find that at tab 3. I am sure you don't need me to read it to you.

I will read one case on point. It is the Edwards case by your sister prothonotary at tab 43, rendered by Prothonotary Aronovitch. If you go to the last paragraph of that decision, paragraph 44, the last three lines say:

"Rule 64 of the Federal Court Rules, 1998 permits the court to grant a declaration simpliciter in all proceedings. Clearly declaratory relief may be sought as relief in an action against the Crown pursuant to section 17 of the *Federal Court Act*."

I don't know if you were around in federal court practice, your honour, prior to these rules. Under former rule 16, 03, declaratory relief could only be sought by way of action. Why? Because it's recognized that declaratory relief requires a trial with evidence and a factual context before a declaration can be sought.

So where my friend thinks this court has no jurisdiction to entertain this action is perplexing.

The last source of jurisdiction and general comment I'd like to make is section 2 of the *Federal Court Act* itself, which is found at tab 3 of my authorities. I am sure you have read this definition of a federal board or tribunal until the cows have come home.

This action seeks not only declaratory relief with respect to the interpretation of federal statutes, but it also seeks declaratory relief with respect to the conduct of a federal board, commission, or other tribunal which is defined under section 2 as meaning "any body, person or persons having exercising or purporting to exercise jurisdiction or powers conferred by or under an act of Parliament or," I would underline, "under an order made pursuant to the prerogative of the Crown."

This court has jurisdiction to review, constitutionally, Crown prerogative. Again, Khadr did that with respect to – with foreign relations.

With those general observations, I will now turn to what I say I would beg you to consider, the underlying constitutional principles that must be reviewed when you are moving to strike an action.

You cannot simply by analogy take a lot of the cases my friend has before you which have to do with private actions between private individuals and say Parliament has made a choice. Those don't apply where the Constitution is not engaged or where the Constitution is not invoked.

You have to keep that in mind when you are looking at this action.

I am going to take you through some of the principles which completely contradict the fanciful assumptions of my friend here as to how our system works or should work.

The first line of cases I am going to take you through – because this claim is for declarations as to the unconstitutional provisions and executive action; secondly, the damages arising out of the – or sought in this claim arise from that unconstitutional executive and state actor action and inaction – I'm going to first take you through the restraint on Parliament and executive action with respect to the Constitution.

The first case I would like to take you through briefly is found in volume 1 of my authorities.

Some of the stuff I am going to read you sounds like old law-school stuff, and unfortunately, those not used to constitutional litigation just gloss over it as if it were a sermon from their parish, as it were. But these are very important holdings of the Supreme Court of Canada with respect to where Parliament's ability to legislate stops. Or delegate, for that matter.

Tab 6 is the first authority I would like to read. As you have heard from my friend, this is for parliamentarians, this belongs to MPs, and all of this. This is the *Nova Scotia Attorney General v. Canada Attorney General* case from 1951 – pre-Charter, obviously – and this was – the federal Parliament wanted to delegate certain duties and jurisdiction to the provincial governments.

You would think this is a matter between governments and between different parliaments, and the citizen has no say.

If you turn over the page to page 3, what the Supreme Court of Canada said, and this goes to a lot of my friend's submissions and I have side-barred it, is that:

"The Constitution does not belong either to Parliament or to the Legislatures; it belongs to the country and it is there that citizens of the country will find the protection of the rights to which they are entitled. It is part of that protection that Parliament cannot (sic) legislate…"

And it goes on.

So this case is very clear on the fact that neither the federal Parliament nor the provincial parliaments own and keep the Constitution in their back pocket, as it were. It belongs to the citizens, and even on an issue of division of power, the legislatures' right to legislate and delegate stops with the constitutional framework.

I raise that case to pause as well because while my friend may be reading Chaoulli to you, where certain Charter rights are invoked, the Charter is not the be all and end all of the Constitution. Whenever there is a constitutional requirement or imperative invoked, you can replace Charter for that. It's of equal importance, more so according to this case.

The second case I would like to refer you to is at the next tab at tab 7, and that the Air Canada and BC Attorney General case, 1986. What is important about this case is that even though it was decided post-Charter, the court was not dealing with Charter issues here.

There is a fiction running around that is expressed and repeated by a lot of my friends at the DOJ, and some judges, that you cannot mandamus a minister or Crown to do anything and that ministers of the Crown purporting to exert prerogative power can't be mandamused. This case says otherwise.

JUSTICE AALTO: I think I agree with that proposition, Mr. Galati. I can think of several cases in this court the last year or two.

MR. GALATI: Right.

JUSTICE AALTO: Where exactly that has happened.

MR. GALATI: But this was always in the law. It's not a development of the law.

This case, if I may, just one brief passage out of it, paragraph 12, this was a case where in BC you needed a fiat from the lieutenant-governor to sue the Crown for taxes that were owed because a statute had been declared unconstitutional. The attorney general refused the fiat, advising the lieutenant-governor not to grant it. They took judicial review, and the Supreme Court of Canada said that the attorney general, as the chief legal officer, had the duty to give the correct constitutional advice to the lieutenant-governor and that he was under constitutional duty to accept that correct constitutional advice.

At paragraph 12 with the sentence that starts that turns over the page, it states:

"All executive powers, whether they derive from statute" –

And I would underline:

"Whether they derive from statute, common law or prerogative must be adapted to conform to constitutional imperatives."

I highlight paragraph 14 and 19, 21, and 22, for the moment.

So we see here that the Supreme Court of Canada, even before the Charter, firmly put its foot down and said wait, both with respect to Parliamentary supremacy, so-called, and with respect to Crown prerogative of the minister, the buck always stops at the Constitution. If there are constitutional claims made, it is not an answer to say defer to Parliament. It is not an answer to say the minister is invoking prerogative. That does not wash – I'm sorry, that does not wash in terms of the constitutional imperatives and requirements.

The next case post-Charter I would refer your honour to is the Quebec secession reference, which is at tab 8 of my authorities.

As you recall, the Quebec secession reference set out four non-exhaustive pillars of our constitutional framework. Two of them are the rule of law and constitutionalism.

I direct you first to page 23, paragraphs 70 and 71 of that case.

The Supreme Court of Canada, starting paragraph 70, in discussing the underlying constitutional pillars of constitutionalism and rule of law which even the Parliament cannot breach, states at paragraph 70:

"The principles of constitutionalism and the rule of law lie at the root of our system of government. The rule of law, as observed in Roncarelli, is a fundamental postulate of –"

JUSTICE AALTO: Mr. Hajacek was talking about law school. The very first case I ever read was Roncarelli and Duplessis.

MR. GALATI: There you go. One of my favourites.

JUSTICE AALTO: Fundamental constitutional principle.

MR. GALATI: That is carried forward, your honour, right through the Charter and post-Charter. At the last three sentences of that paragraph:

"At its most basic level, the rule of law vouchsafes to the citizens and residents of a stable, predictable and ordered society in which to conduct their affairs."

Then at paragraph 71, third line from the top:

"Secondly we explained…"

They are referring to the Manitoba Language Reference.

"…that the rule of law requires the creation and maintenance of an actual order of positive laws which preserves and embodies the more general principles of normative order…"

And that it regulates the relationship between the state and the individual, and that must be regulated by law.

"Taken together, these three considerations make up a principle of profound constitutional and political significance."

Then at paragraph 73 and 74 the Supreme Court makes the – I'm sorry, before I get there, the Supreme Court at paragraph 72 states in the middle of the paragraph:

"This court has noted on several occasions that with the adoption of the Charter…"

And the *Constitution Act*, 1982, I would add, your honour,

"…the Canadian system of government was transformed to a significant extent from a system of parliamentary supremacy to one of constitutional supremacy."

Which addresses a lot of my friend's arguments that Parliament is master of its own house unless – unless there's a constitutional issue at play. And I will get to the budgetary process later.

It's the Constitution that is supreme, not Parliament.

Then at paragraphs 73 and 74 the Supreme Court in the Quebec secession reference makes the point that democracy – as one of the four pillars, as you'll recall, of constitutionalism, the rule of law, democracy, federalism, and respect for minorities – I'm sorry, they enunciated five pillars – democracy does not end with majority rule in Parliament. That is what the Constitution is there to temper and what the courts are there to adjudicate. They say that democracy does not end with majority rule.

Parliament just can't do what it wants. There are constitutional constraints, even though they have been elected, to what it can or cannot do.

JUSTICE AALTO: Mm – hmm.

MR. GALATI: And in fact at pages 24 and 25 they make the point that constitutional rule overrides majority rule.

I have taken you through some general principles on the restraint of Parliament and the executive in terms of their actions. I now want to take you through some constitutional principles on Parliament's restraint and executives' restraint when they don't take action, which is equally offensive under our constitutional framework.

The first case, of course, where they enunciated this is the Vriend decision, which is found at tab 10 of my book of authorities, pages 23 and 24 of that decision.

It's the heading that starts with "Application of the Charter," "application of the Charter to a Legislative Omission."

The Crown in that case had argued that the Constitution can't apply to omissions, only overt acts by the Parliament or by the executive. The Supreme Court rejected that argument. I am not going to take you through the whole thing, but I will take you to the summary found at paragraph 56 where the court says:

"It is suggested that this appeal represents a contest between the power of the democratically elected legislatures to pass the laws they see fit and the power of the courts to disallow those laws or to dictate that certain matters be included in those laws. To put the issue in this way is misleading and erroneous. Quite simply, it is not the courts which limit the legislatures, rather it is the Constitution which must be interpreted by the courts that limits the legislatures."

Now here we are talking about legislative inaction.

JUSTICE AALTO: If I am understanding, part of the Crown's position is that the inaction that is alleged in the statement of claim relates to certain provisions of the bank act and those provisions are not mandatory provisions; they are permissive provisions, that the Bank of Canada may do this, this, or the other.

MR. GALATI: Right.

JUSTICE AALTO: It does not say the Bank of Canada shall do this, that, or the other.

MR. GALATI: I will get to –

JUSTICE AALTO: And what subjective analysis does one have to go through

to decide whether or not it's appropriate to enforce those, or objective analysis.

MR. GALATI: I will get to that in two seconds, after I finish with Khadr.

JUSTICE AALTO: Okay.

MR. GALATI: Thank you. I will skip ahead to answer your question because it is fresh on your mind. If you look at the Khadr case at tab 71, as you noted already, the Supreme Court of Canada mandamused, or made an order against the minister of foreign affairs with respect to the minister's prerogative over foreign affairs.

JUSTICE AALTO: Mm – hmm.

MR. GALATI: And why? Because the minister failed to act. It's not that he did anything against Mr. Khadr; the minister simply refused to act. And so, flowing from Vriend, where a legislature refuses to include once there is a scheme in place, that can lead to constitutional violations. But ministers of the Crown are state actors, can also breach the Constitution by refusing to act.

That goes up as far and as high as the ultimate discretion any minister can exercise over a prerogative. There is no higher discretion known in our law. Yet the court in Khadr said twice you haven't acted and this has caused a constitutional breach.

Let me quickly address the "may" versus "shall" issue, before I get back to the general discussion. Why don't we turn up the *Bank of Canada Act*.

JUSTICE AALTO: Give me a sec while I finish my note on this point, Mr. Galati. All right; the bank act?

MR. GALATI: Yes, let me address the "may" versus "shall" argument. Let's first turn to section – I need your honour to understand that under section 17 of the *Bank of Canada Act*, the minister of finance is the holder of all shares, capital shares of the bank on behalf of Her Majesty. He is the sole shareholder for Her Majesty the Queen, which really, in real terms, means he is the sole shareholder under the statute to the people of Canada, so it's not as if he is some nominal minister here. Under 17, he is the sole shareholder.

Under section 14, which is equally important, of the *Bank of Canada Act*, the minister of finance, contrary to popular myth out there, has the final say. He can direct the governor of the bank to do anything. The minister is in charge. Although he doesn't tend to engage in the day-to-day operations, statutorily, the minister incarnate –

JUSTICE AALTO: We are back to the Diefenbaker-Coyne affair.

MR. GALATI: That may be nice political intrigue, but it doesn't define the statute. The statue makes it clear. And I just noticed Mr. Coyne, may he rest in peace, only passed away a few months ago at 102.

JUSTICE AALTO: Yes.

MR. GALATI: However, that doesn't – that whole affair, as intriguing as it was, doesn't dictate the statutory framework. Under 14, the minister is in charge.

Let's go to section 18 where my friend says it's permissive rather than mandatory. As your honour knows, probably, from hearing submissions ad nauseam on the word "may," "may" can be interpreted in three separate ways. The first meaning of "may" is complete discretion in the hands of the decision-maker, subject of course to the doctrine of reasonableness under Baker, which I argued at the Supreme Court.

The second meaning of "may" is that the body has a power to do what it does, but doesn't necessarily have the discretion. When they say "the bank may," it is conferring an authority, a power on the bank.

The third meaning of "may" is when that authority is statutorily set out, there is argument that when the preconditions are set out for exercising that authority, it turns into a "shall."

If you look at section 18 of the *Bank of Canada Act*, and the heading tells it all: "Business and powers of the bank." It says "The bank may," blah, blah, blah.

Is that "may" an unfettered discretion? By terms of statutory framework, your honour, if the minister of finance is in charge, how can it be an unfettered discretion? It has to be an authority or power. The minister is in charge. The minister is the shareholder of the bank under 17, and the minister is the boss under section 14 and can issue a directive to the bank governor.

So how can the "may" on the first argument under section 18 be anything but a power or authority? Not a discretion.

Now, on the issue of whether or not that authority turns into a "shall," I can refer your honour to tab 28 of my authorities, which is a tax case, the Bitumar case from this court, the Federal Court. At tab 28, pages 8 and 9 of that decision, you have this court adopting the House of Lords and the Bishop of Oxford case, where this court has said, "as a general rule" – if you see the second paragraph that is side-barred, your honour:

"It's a general rule the word 'may' in a statutory provision is usually regarded as permissive and is not given a mandatory connotation unless the context clearly indicates a contrary intention. Permissive words may be construed as creating a duty where they confer a power."

I submit that section 18 confers a power, for the reasons I just outlined.

"The exercise of which is necessary to effectuate a legal right."

My clients say the exercising of that power must be effected to effectuate their constitutional rights in various forms.

"The question whether words prima facie discretionary are intended to make the exercise of a power imperative in all cases must be solved from the context of the particular provisions and general scope and objects of the enactment conferring power."

Now, if I am thinking what you are thinking, you are saying how does that help me on a motion to strike? The answer to that is: When do we decide this issue of statutory interpretation? On a motion to strike? Clearly the answer is no. It's left best to the trial judge.

And that doesn't come from me, it comes from the Supreme Court of Canada. If your honour turns to tab 4 – I'm sorry, I think it's tab 15. Yes, tab 15 of my book of authorities. Very short decision, but very weighty and very on point to the issue before us. It's the Dumont case versus the Attorney General, where the plaintiffs or applicants were seeking declaratory relief with respect to various federal statutes. If you turn there. It's a five-paragraph decision, Madam Justice Willson speaking for the court. Paragraph 3 states:

"Issues as to the proper interpretation of the relevant provisions of the *Manitoba Act* and the *Constitution Act* and the effect of the impugned ancillary legislation upon them would appear to be better determined at trial where a proper factual base can be laid."

It would be somewhat presumptuous, I would respectfully submit, to resolve this issue of whether that "may" confers a power and whether that "may" be subject to mandamus was a duty given the complex factual matrix of both the composition of the Bank of Canada, its history, the reasons it was created for, which were for the very reasons my clients say they have basically made those provisions and appendix provisions, and abdicated their responsibility to govern.

All this cannot be determined on a motion to strike before you. The interpretation of that issue is for the trial judge.

If I can go back, then, to my general observations – and I wanted to give you the answer so that it was fresh in your mind, your honour.

In my general observations I was outlining –

JUSTICE AALTO: We are doing fine on time. I see you keep checking the clock.

MR. GALATI: I don't wear anything I can lose. I always lose watches.

JUSTICE AALTO: Pens and cuff links.

MR. GALATI: And my current wife says partners, as well. I can't hold onto them.

I have taken you through pre-Charter restraint both on Parliament and executive with respect to Constitution constraint. I have taken you through restraint on Parliament and executive inaction in Vriend and Khadr, and obviously the rhetorical question is: Who gets to determine that? The courts get to determine that, where that line is drawn, where Parliament can't cross.

Of course that trite proposition was summarized and globalized by the Supreme Court of Canada in Dunsmuir at tab 9 of my authorities. And I want to briefly take you through Dunsmuir. I am sure you are not under this misimpression, but I think my friends may be, that the constitutional right to judicial review is restricted to the procedural vehicle of an application for judicial review as we understand it under sections 18 and 18(1). That is not the case.

Judicial review writ large is the court simply reviewing the legislation and actions of the executive, whether it be in a judicial review application or an action. It matters not. And so this action before you in the constitutional sense is understood by the Dunsmuir decision of the Supreme Court of Canada as a judicial review of certain parts, certain parts of the *Bank of Canada Act*. It is judicial review of the conduct and inaction of the executive members who are charged with statutory duties under those federal pieces of legislation.

I point your honour to paragraphs 27 through to 33 of Dunsmuir and briefly pause. There you have a brief but weighty summary of the constitutional right to judicial review. My clients have a constitutional right, subject to the other meaning, the other issues of standing and justiciability and all of that, to constitutional review, the conduct – the terms of the *Bank of Canada Act* and the conduct of the executive in exercising their duty under that act as well as the minister of finance in the budgetary process.

At paragraphs 27 and 28 the Supreme Court underlines why judicial review is all important. It is the lever. It's is really the lever on which the rule of law and constitutionalism balances. The interaction between the state and the individual is based on the court's review of the constitutionality and vires action of both administrative tribunals and Parliament.

So at paragraph 27 and 28 you see the court states:

"As a matter of constitutional law, judicial review is intimately connected with the preservation of the rule of law. It is essentially that constitutional foundation which explains the purpose of judicial review and guides its function and operation."

On and on. And at paragraph 28:

"By virtue of the rule of law principle, all exercises of public authority must find their source in law. All decision-making powers have legal limits, derived from the enabling statute itself, the common or civil law or the Constitution. Judicial review is the means by which the courts supervise those who exercise statutory powers, to ensure that they do not overstep their legal authority. The function of judicial review is therefore to ensure the legality, the reasonableness and the fairness of the administrative process and its outcomes."

Paragraph 31, which is important to this case because my friends rely on section 30.1 of the *Bank of Canada Act* that purports as a privative clause to bar any action against Her Majesty or the bank or anybody from exercising authority under the act. Well of course we know from Dunsmuir that is all fine and dandy; there is an exception. That privative clause cannot be invoked to bar constitutional issues. And that is at paragraph 31. It states:

"The legislative branch of government cannot remove the judiciary's power to review actions and decisions of administrative bodies for compliance with the constitutional capacities of the government. Even a privative clause, which provides a strong indication of legislative intent, cannot be determinative in this respect… The inherent power of superior courts to review administrative action and ensure that it does not exceed its jurisdiction stems from judicature provisions in sections 96 to 101 of the *Constitution Act*, 1867."

And they cite Mr. Justice Beetz in the Bibeault case.

"'The role of the superior courts in maintaining the rule of law is so important that it is given constitutional protection.' In short, judicial review is constitutionally guaranteed in Canada, particularly with regard to the definition and enforcement of jurisdictional limits."

What we have is my friend saying we – you have no jurisdiction to issue declaratory relief on the proper interpretation of federal statutes and you have no jurisdiction to engage in an analysis as to whether some of those statutes have been constitutionally breached and you have no jurisdiction to review executive action for alleged constitutional breaches.

JUSTICE AALTO: You should stay out of the fray, in other words.

MR. GALATI: You should stay home and golf. Peter is my friend, but that is a silly argument. There's federal state actors, federal statutes. Jurisdiction is there. Anytime you have that jurisdiction, then you can invoke the Constitution. Otherwise this court would never be doing any constitutional work. That is just a nonsensical argument.

If somebody came in here and said I want to challenge the Ontario educational act, we know you don't have jurisdiction even if it's under the Constitution because it's not buttressed by federal law. Once it is buttressed by federal law, once you are into section 2 of the *Federal Court Act*, once you are into rule 64, once you are into a federal statute and the conduct of federal state actors, then the Constitution walks right in with the same jurisdiction. There is no doubt about that.

Lastly on this point, again, if you want authority on this idea that, don't confuse constitutional review and the right, constitutional rights to judicial review with a vehicle of an application versus an action, I am sure you are fully aware of the six cases of the Supreme Court of Canada, so-called TeleZone cases.

JUSTICE AALTO: Yes.

MR. GALATI: For years a lot of my actions were turfed out of this court on the Grenier holding because you had to exhaust judicial review as a procedural application. The Supreme Court put that to rest, but the case I want you to refer to, if you need to, is a case I argued before Justice Russell on the Czech Roma cases that are before the court. Tab 59.

Tab 59 interprets the TeleZone cases, and the issue in Siva, which is Sivak et al., was whether or not the judicial review which had been granted leave should be converted into an action, so I can get all my relief procedurally in one proceeding. Mr. Justice Russell, interpreting TeleZone and everything else at pages 18 to 22 said yes, we can all have it in one.

The issue in Sivak is the institutional bias on constitutional grounds of the IRB with respect to the Czech Roma. It is a constitutional issue.

I got leave, I perfected the applications, moved to convert into an action, it was converted all into one, and Mr. Justice Russell said of course you can do this. This is what TeleZone and all the other cases say we can do because the matter is in the same court.

That is only there to make the point that judicial review of administrative and state action on constitutional grounds can also include an action.

At fifteen minutes before my first hour, I will take you very briefly –

JUSTICE AALTO: Can I stop you briefly, Mr. Galati? Why don't we go for another 15 minutes so you can finish your first hour, we will take a break, and you can continue.

MR. GALATI: After this point I will have done with my general principles and be ready to address my friend's attacks on the pleadings.

I want to again highlight and put to rest this fallacy that there is a deference to Parliament's choices when we are engaging in constitutional review.

Deference to Parliament's choice only applies when they make policy choices within their head of power and within their purview in the statute. Of course we shouldn't be able to double-guess their choices, but we can certainly double-guess their choices if they infringe the Constitution.

JUSTICE AALTO: I agree.

MR. GALATI: We don't make the choice for them.

JUSTICE AALTO: In general I agree with that proposition, Mr. Galati, but here it begs the question: Is there a policy decision as to why sections (i) and (j) of the bank act have not been implemented? And therefore, if it falls into policy, why are we treading on that?

MR. GALATI: Have you seen an expression of policy on that issue?

JUSTICE AALTO: Not – there is no reference to it in the statement of claim.

MR. GALATI: There is no – and my friend could have put evidence in on this motion apart from the no cause of action; he didn't. My point is that is for the trial judge on the evidence to determine, whether it is policy or statutory or constitutional requirement. It is not for you on this motion to strike. You can't assume that it's policy on this motion, just from a bare reading of the act, and say I am going to strike it. Dumont says you don't do that. The Supreme Court of Canada says you don't do that.

As you know, your honour, everyone in this procedure on a motion to strike sometimes starts sliding over the line, myself included, getting into the merits rather than staying focussed on, at this juncture, can I determine the issue. And my respectful submission is no, you don't determine that issue at this juncture.

JUSTICE AALTO: Okay.

MR. GALATI: On the issue of deference to Parliament's choices, let me take to the Chaoulli case at tab 35 of my authorities, which is the health care case. It's quite clear; my friend has a case called Toussaint, and I was involved in other proceedings with Ms. Toussaint in the Federal Court of Appeal on the humanitarian and compassionate legislation under the *Immigration and Refugee Protection Act*.

I am not disputing my friend's context that nobody has a pre-standing right to health care as a constitutional matter. But the Supreme Court of Canada in Vriend and in Chaoulli said once but Parliament manages a choice on what they are legislating on and what they are doing, well that choice is subject to constitutional review. It is not enough to say we have made this choice and go home.

If I could refer you to paragraphs 85 to 89 –

JUSTICE AALTO: What tab are you at, Mr. Galati?

MR. GALATI: Tab 35, your honour, volume 1 of my authorities.

My friend took you through the breakdown of who made what decision on what basis. I am going to make this a very respectful submission to you, is that even if only three judges in the Supreme Court of Canada ruled this on this Charter, it's good enough for you today on this motion. The trial judge may come to distinguish Chaoulli, but –

JUSTICE AALTO: I am not about the overrule the Supreme Court of Canada.

MR. GALATI: Even three judges. At paragraph 85 of that decision, entitled "Level of Deference Required," paragraph 85 the Supreme Court states:

"In the past, the Court has considered the question of the basis of its power of judicial review."

And it's Hunter and Southam; Vriend, which I took you through; the Quebec secession reference, which I took you through. And then states:

"However, as can be seen from the large number of interveners in this appeal, differences of views over the emergence of a private health care plan have a polarizing effect on the debate, and the question of the deference owed to the government by the courts must be addressed. Some of the interveners urge the courts to step in, while others argue that this the role of the state. It must be possible to base the criteria for judicial intervention on legal principles and not on a socio-political discourse that is disconnected from reality."

At paragraph 87 the court continues:

"It cannot be said that the government lacks the necessary resources to show that its legislative action is motivated by a reasonable objective connected with the problem it has undertaken to remedy. The courts are an appropriate forum for a serious and complete debate."

They cite G. Davidov, saying that,

"'Courts do not have to define goals, choose means or come up with ideas. They do not have to create social policies; they just have to understand what the other branches have created. No special expertise is required for such an understanding.' In fact, if a court is satisfied that all the evidence has been presented, there is nothing that would justify it in refusing to perform its role on the ground that it should merely defer to the government's position. When the courts are given tools they need to make a decision, they should not hesitate to assume their responsibilities. Deference cannot lead the judicial branch to abdicate its role in favour of the legislative branch or the executive branch."

At paragraph 89:

"The courts have a duty to rise above political debate. They leave it to the legislatures to develop social policy. But when such social policies infringe rights that are protected by the charters, the courts cannot shy away from considering them. The judicial branch plays a role that is not played by the legislative branch."

I want to pause at Chaoulli because on these motions to strike, one of the most unfair things that is done is often my friends get up there from the Department of Justice and say, look at what the Supreme Court looked in the case. This is the kind of evidence they look to, and then say the plaintiffs in this case haven't pleaded that. Of course not. There was a trial here. The factual underpinnings here came after evidence and trial. You cannot transplant in particular reference to what kind of evidence.

I plan on behalf of my clients, if this is not struck, to present the evidence to support the facts that are pleaded, which are provable. Unlike Operation Dismantle, these facts are provable. Doesn't matter that it deals with a couple of international orga-

nizations and some private banks abroad. We have experts. We have people here in Canada. These things, the facts alleged in the statement of claim, can be proven.

And so the other passages in Chaoulli are found at paragraphs 183 and 185 of the decision, and that is the issue of justiciability. They reject, they reject the government's position that because these are health-care choices made by the Parliament and because they are complex and they involve this and that they are not justiciable. They are justiciable. If you can prove the facts and point to a constitutional right, of course they are justiciable.

We are alleging facts. We are alleging constitutional breaches, both under the structural imperatives of the *Constitution Act*, 1867 and 1982, and a few Charter breaches.

And so these are provable facts. That is all we need to do right now, is outline the facts. They are provable, but you can't say you don't have the evidence, because I can't be caught in a Catch-22 of not having the evidence to support the facts, but when I present evidence it's inappropriate in the proceedings.

JUSTICE AALTO: Mm – hmm.

MR. GALATI: That is not fair to the plaintiffs. So that is with respect to the Parliament's choices. Then – again, I am going to take you through it, but I refer you back to tab 7 of the book of authorities and I will end the hour with this, or 35 minutes, as it were.

The same holds true with executive action, even if it is royal prerogative. I take you back to the Air Canada and BC Attorney General case at tab 7. I take you to paragraphs 12 and 20 of that decision. I have taken you through 12 already, that says all executive action, including that of pure Crown prerogative, must comply with constitutional imperatives.

At paragraph 20 the court dismisses this notion that that just means that the attorney general must make a decision and it stops there. The parallel would be Parliament made a choice. Here the attorney general made a choice not to recommend a fiat to suit the Crown. You see what the Supreme Court says at page 8 of the decision:

"The attorney general is the lieutenant-governor's principal legal advisor and the legal member of the executive council. In giving advice…"

Three lines down:

"…the attorney general must conform to the requirements imposed by the federal structure of the Constitution. He is bound to advise the lieutenant-governor to grant his fiat. I cannot accept the proposition advanced by Callaghan J. in the court of appeal to the effect that the attorney general complied with his duty to advise the lieutenant-governor when he advised them to refuse a fiat."

I point to the Chaoulli and the Air Canada cases to say that neither Parliament nor the executive can, in the face of a viable, non-frivolous constitutional objection, say but we have made our choice; go home. That would subjugate the Constitution to Parliament and the executive when, under our system, Parliament and the executive are bound by the Constitution.

With that I will give Madam Reporter a break. I don't know if you want to take the lunch now?

JUSTICE AALTO: I wanted to canvass timing. Are we on time?

MR. GALATI: Yes. If we take half an hour now –

JUSTICE AALTO: I agree with you, Mr. Galati. We will take a longer break so people can grab some sustenance if they need it. It's twenty to twelve. We will come back at 12:15 and you have got another hour and Mr. Hajecek has?

MR. GALATI: Half an hour. We will finish before two.

JUSTICE AALTO: Two is, there is a little wiggle room in the two o'clock. Let's be fair to people and we will make it 12:30. We've got time. We will finish.

*Luncheon recess taken at 11:43 am. On resuming at 12:31 pm:*

JUSTICE AALTO: Mr. Galati, I think you still have the floor.

MR. GALATI: Thank you.

JUSTICE AALTO: And in this hour of your time, you are going to review in greater detail the positions of the Crown respecting the statement of claim.

MR. GALATI: Right.

JUSTICE AALTO: And why they amount to a cause of action that should be allowed to survive.

MR. GALATI: Right. Before I do that, on the last point that I left before on the deference to Parliament, I just have 30 seconds, one last reference I need to point to you.

JUSTICE AALTO: Yes?

MR. GALATI: Which is the Vriend case at tab 10, paragraphs 52 and 53. This is very important. I'm sorry I omitted it. I didn't have my glasses on at the time.

What the Supreme Court of Canada in Vriend said in paragraphs 52 and 53 is, in paragraph 52 they basically say that as long as you are in the ballpark of the constitutional challenge, you don't make early decisions on this until it's fleshed out.

And then paragraph 53 – and the reason they say that, in paragraph 52, they say at the top of page 24:

"At this preliminary stage no judgment should be made as to the nature or validity of this matter or subject. Undue emphasis should not be placed on the threshold test since this could result in effectively and unnecessarily removing significant matters from a full Charter analysis."

If I hadn't been clear, whenever I read Charter in many of the cases, it's my respectful submission that any constitutional analysis is equally of the same weight.

And then paragraph 53 on whether or not the inaction comes under 32 of the *Constitution Act*, the Supreme Court had this to say:

"Further confusion results when arguments concerning the respective roles of the legislature and the judiciary are introduced into the section 32 analysis. These arguments put forward the position the courts must defer to a decision of the legislature not to enact a particular provision, and that the scope of Charter review should be restricted to such decisions will be unchallenged. I cannot accept this position. Apart from the very problematic distinction it draws between legislative action and inaction, this argument seeks to substantially alter the nature of the considerations of legislative deference in Charter analysis. The deference very properly due to the choices made by the legislature will be taken into account in deciding whether a limit is justified under section 1 of the Charter…"

This is very important because that necessarily means at trial.

"…and again in determining the appropriate remedy for a breach."

I will leave that, then, to say that at this juncture, on a motion to strike, it is my respectful view that where the issue is one of construction of the vires of a statute or the constitutional challenge to legislation or to executive action, it is not proper to come to a determination at this juncture.

Let me then go to my friend's particular attacks on these pleadings.

I take your direction not to go over the test, so I am going to skip over. I am now going to basically follow my memo, your honour.

JUSTICE AALTO: Okay.

MR. GALATI: And this response to

his memo, chronologically in terms of his memorandum on the motion. And so if you can turn then, I am going to skip from three to six, which is the test on a motion to strike.

JUSTICE AALTO: Yes.

MR. GALATI: And start at page 7 of my memo, which is the position of the defendants.

JUSTICE AALTO: You never use the phrase "misfeasance in public office" in the statement of claim, but in essence the Crown is arguing it's dressed up in other ways, but that is in essence what it is: misfeasance in public office by failing to abide by the provisions of the bank act and the purporting of the budget, and the like.

MR. GALATI: Right, and that I let for the Court of Appeal answer, again. No. That is the way he is saying it is. I didn't use "misfeasance in public office" for good reason. This is not the tort at common law or under administrative law, a misfeasance of public office. It may be, as well; but what we are talking about are actions and inactions of the executive that simply breach constitutional constraints, actions and inactions which breach constitutional rights both to the structural imperatives of the Constitution and the Charter.

My first point, your honour, is that whether you call this public misfeasance or conspiracy, the bottom line is, this is a complaint, a constitutional challenge and a request for declaratory relief for the actions and inactions of the executive with respect to the *Bank of Canada Act* and with respect to the minister of finance's constitutional duties in presenting the budget that underlie this claim.

I will get to the conspiracy in a second, but at the end of the day, it doesn't matter what you call these things. It's the actions and inactions. They either breach constitutional rights or they don't, and if they do, and if the facts are set out as to why, it goes to trial. It doesn't get struck.

JUSTICE AALTO: Mm – hmm, okay.

MR. GALATI: And so on the first – and that is why I put it in quotes. I am simply following my friends, my friend's at paragraph 7 of my memo, following my friends.

JUSTICE AALTO: No, I understood that. Yes. I figured out your game plan here.

MR. GALATI: And I say that in paragraph 7, what I just said to you.

And that leads to the fact that neither Parliament nor the executive – and I took you through the cases this morning; I'm not going to do it again – can abdicate its constitutional duty to govern. That is what is happening here.

And you have the old cases of Hallett and Grey and Carey. You have Grey. You have the Quebec secession reference. Vriend at tab 10 and Khadr at tab 71. All those cases say that.

Let me go to the – and I am not going to take you through them again.

Let me go to page 9 of my memo and the so-called conspiracy allegations.

If my friend had asked me for particulars of who all that you know are engaged in the conspiracy, I am sure I could give him more names than the three ministers and the organizations we set out. I don't know if that is required. If it is required, I can easily amend to provide those. That could have been dealt with by a request for particulars. I simply name the members of the conspiracy on an institutional basis in terms of the ministers and the organizations, the BIS, the IMF and the private bankers in Basel that gave our governor of the Bank of Canada his marching order on fiscal and interest and other policies. I can provide the names of the heads of those institutions.

But one thing that is wrong in my friend's assertion on any conspiracy, and quite frankly is embarrassing and wrong with some of the jurisprudence in this court, he cites Sivak that I argued before Mr. Justice Russell. It is on appeal to the Court of Appeal. This notion that you can't name unknown conspirators is wrong. I am going to take you to the cases. It's wrong. You can have unknown conspirators and duped conspirators.

So you can have conspirators that are unknown to the victims, and duped conspirators who don't know that they are part of a conspiracy, for instance the mule that runs the drugs without knowing it's in the luggage to the airport.

The *Hunt v. Carey* case, which is at the same time the seminal case on a motion to strike, is also a conspiracy case. You will find that at tab 14 of my book of authorities.

If you go to tab 14 – and I am not going to bore you with the long verse. At pages 15 through 17, the court, in looking through the history of the tort of conspiracy makes the point that it coming from the criminal law. Like a lot of torts come from the criminal law – assault, illegal confinement and all – it comes from the criminal law of conspiracy.

If you look at paragraph 10 of my memorandum at page 9, you will see various cases from the Supreme Court and the Ontario Court of Appeal which clearly state that unknown conspirators may be put in an indictment.

JUSTICE AALTO: Of course, I accept that you can't necessarily always name each and every individual who may be a participant in a conspiracy because you may not know them all. But surely you must know one or two.

MR. GALATI: I know the minister of finance and I know the minister of national revenue. I know the institution of the Bank of International Settlements. I know the institution of the IMF and all that. If you want the heads and directors and all the people who run those organizations, I will name them, but in doing that I have named the co-conspirators and I have said what they are conspiring to do, what they have effected to do. There is no deficiency in the pleadings in that respect.

JUSTICE AALTO: There is no – well, the only deficiency is, and it's why I was asking Mr. Hajecek about amending, is that there is a deficiency in respect of the identity of the conspirators, but the pleading of conspiracy appears to be there, the elements of it. And Mr. Hajecek's argument was, well, perhaps it could be amended. He wasn't conceding completely that it could; and in any event, it must be considered in light of the justiciability issue.

MR. GALATI: Sure.

JUSTICE AALTO: Which is an umbrella issue to much of what is here.

MR. GALATI: How is this for justiciability? People often accuse me of being a conspiracy theorist and I say to them, you must be a coincidence theorist. There is a reason why conspiracy is a Criminal Code offence. Conspiracies actually are undertaken every day.

What is a conspiracy? What I have pleaded in paragraph 41, pursuant to *Hunt v. Carey*. It's the use of legal or illegal means in an agreement to harm X.

JUSTICE AALTO: Mm – hmm.

MR. GALATI: Or it's the use of illegal means which a person ought to have known would harm X. What do we have here? We have the minister of finance, who is the sole shareholder and ultimate authority under the *Bank of Canada Act*, who is refusing to exercise the authority for which Parliament actually set the bank up in the first place, to float loans to the various levels of government interest-free for their human capital infrastructure programs. Why? Because it

was decided by a group of private bankers over in Basel in 1974 when we joined that private group of bankers – they are private individuals – that they would dictate our policies with respect to the floating of loans.

So it was decided – and it is pleaded – that in 1974 the Bank of Canada would no longer, in an arbitrary and absolute fashion, do what it was created to do.

So the effect as is pleaded is that the Bank of Canada gives loans to commercial banks, those private individuals, at zero to one per cent interest currently, and then those banks lend it back to our government at two per cent interest or three per cent interest, commercial rates. That is the conspiracy. They are circumventing the act. They are circumventing Canadian sovereignty.

In passing, and I will get to the Charter arguments in a second, just think, your honour, of what the impact is. That is unequal treatment of all Canadian citizens because our Bank of Canada is giving private bankers in Europe and the States and here in Canada interest rates less favourable than the Bank of Canada is willing to give to Canadian citizens under its mandate. That is discriminatory, with dire consequences that are pleaded in terms of the decay of socio-economic programs and the society at large.

It's all pleaded and I will get to it in a second.

So the conspiracy; my friend has a problem with the conspiracy because he thinks it is difficult to prove. That is a different issue. I have pled the facts of the conspiracy. If he wants particulars or more names, I will give it to him, but it does not make the pleading bad or insufficient to the point of it being struck.

Can I just give you the page references on those cases? I won't take you to them where – if you accept that you can name unknown conspirators I am not going to take you through them. Okay.

Let's go now to the so-called, what my friend calls an accounting method.

JUSTICE AALTO: Mm – hmm.

MR. GALATI: Maybe I should find another line of work, but I find even from a friend a sort of a belittling of a constitutional requirement as a mere accounting method.

Let's step back for a second.

In every session of Parliament when the Governor General knocks on the door of the House of Commons as representative of the Queen, it's not that they are engaging in pageantry. It is a constitutional requirement that the Queen or her representative go into the Commons and request an appropriation of monies through the Commons, to the taxing power, so that it can spend. And in order to do that, the government has to articulate – the Queen has to articulate what it plans to spend on. That is the budget.

Now, since the Magna Carta and the English bill of rights there has been a constitutional right – and I want to pause here, your honour. To whom does a constitutional right to no taxation without representation accrue? Every private subject of the realm. Every citizen of Canada has that right. It is not an issue about public standing, public interest standing. Every Canadian citizen, because they are subject to the terms of taxation in this country, has a constitutional right to not be taxed – by whom? By Parliament – without representation.

Now, when the revenues and the proposed expenditures in the budget are presented by the Governor General from the throne speech to Parliament, it's impossible to fathom how representation by the MPs of Canadian citizens is being affected if those MPs are not given one side of the ledger, the total revenues.

Now, I want to take you through the education reference case. And my friend is right. You don't need to go past what I have extracted. Of course you are free to read it, and this is at page 10, I set out that sections 53, 54, and 90 of our Constitution are codifications of that constitutional right going right back to Magna Carta and more clearly focussed in the English bill of rights.

In paragraph 14 I say by removing and not revealing the true revenues to Parliament, which is the only body which can constitutionally impose tax, and thus approve the proposed spending from the speech from the throne, the minister of finance is removing the elected MPs' ability to properly review and debate the budget and pass its expenditure and corresponding taxing provisions to the elected representatives of the House of Commons. The ancient constitutional maxim of no taxation without representation was reaffirmed post-Charter by the Supreme Court of Canada in the Ontario education reference.

Then I extract the portion from that case, which is found at tab 34, in which the Supreme Court, Mr. Justice Iacobucci, takes us through the history of that constitutional right.

Now, my friend, he can choose to use Google for historical research; I recommend against it, but this is nothing to laugh at. Revolutions, the Magna Carta, the English bill of rights which was on the heels of the English Civil War were fought over these rights.

And so Parliament has to be eyes open when it taxes; otherwise the citizens' right to no taxation without representation is affected.

Can I direct your honour to the last-quoted paragraph from that case, that refers to this view is affirmed in Westbank First Nation, at page 11.

JUSTICE AALTO: Mm – hmm.

MR. GALATI: Mr. Justice Gonthier states in that case:

"The Canadian Constitution through the operation of section 53 of the *Constitution Act* demands that there should be no taxation without representation. In other words, individuals being taxed in a democracy have the right to have their elected representatives debate whether their money should be appropriated and determine how it should be spent."

My friend says so what; that doesn't apply to this case. It certainly does, because if you notice from the pleadings, we run a deficit in this country without knowing whether or not we need to, which relates to the commercial interest that every citizen is paying to the commercial banks, because the Bank of Canada, the same finance minister, is not extending interest-free loans to cover that debt.

So if Parliamentarians, just in the words of Mr. Justice Gonthier and the Supreme Court of Canada, don't have the total revenue, they can't debate whether or not they should shave tax credits or whether they should, as the government recommends, run a deficit.

My clients aren't saying we get to dictate to Parliament how that debate will result. They may still run a deficit. We are not debating parliamentary procedure here. Our challenge is outside the doors of Parliament, and our challenge is based on this: Every citizen has the right not to be taxed without representation in Parliament. And the Supreme Court in Canada says that means they have be able to meaningfully debate what is being spent. You can't do that if you don't know what is actually coming in.

The question is: Are my clients going to win on this issue? Don't know. Is it frivolous? We can't say that. It is right within the terms and explanation of the Supreme Court of Canada on what no taxation without representation means. It's clearly there. It's not for Parliament to decide. The right

of no taxation without representation is the right of the citizen against Parliament. It's a constitutional right.

JUSTICE AALTO: Yes. And so you say, because Parliament doesn't know what the books and records are really all about, they can't debate the issue, and they can't determine what would be the appropriate policy.

MR. GALATI: And I could say to my MP –

JUSTICE AALTO: You are concerned about the policy, but you are not seeking to influence the policy.

MR. GALATI: No.

JUSTICE AALTO: You are seeking to have the information available to be debated.

MR. GALATI: Right. I want to have the right to call my MP and say hey, Bob, we have given away 150 billion in tax credits. Why don't you push for shaving 40 billion in tax credits so we don't have to pay interest on the deficit this year? It doesn't dictate to Parliament how it decides, it gives – it affects my right as a citizen to no taxation without representation.

It's a very clear, simple, and quite frankly, difficult argument to refute. My friend says wait, my clients haven't asked the minister of finance for those, and there is no pleading.

JUSTICE AALTO: I was just about to ask if you can get it through the *Access to Information Act*.

MR. GALATI: Read the pleadings. It's not available. The Carter Commission on Taxation complained about this in the 1960s. It's not available. The government does not release it. It's unconstitutional, what they are doing. But it is not available, and if my friend has it, I would love to get it.

MR. HAJECEK: I actually do.

MR. GALATI: Yeah? What were the tax credits last year?

MR. HAJECEK: It's on the department of finance web site, I think. I can pull it up for you, if you like.

MR. GALATI: But they don't break down who are getting the credits.

MR. HAJECEK: Not the people, but.

MR. GALATI: Now my friend is giving support to my argument. This is a trial issue. We are exchanging evidence here.

MR. HAJECEK: If my friend wants to give evidence –

MR. GALATI: No, no, it's pleading. It's in the pleading.

JUSTICE AALTO: Nobody is giving evidence. It's just a curious bind that we are all in. There seems to be a vacuum of information.

MR. GALATI: I have it under the tax law as well. What I say or my friend says is irrelevant. We have pleaded it's not available; it is not presented to Parliament every year. That has to be taken as a fact for the purposes of this motion.

If that is not so, that will come out in the wash and this part of claim will be dismissed. But the pleading is it's not made available to the MPs.

Now I move on to my friend's factum and page 12 of my memo, which is the –

JUSTICE AALTO: Charter?

MR. GALATI: – section 30.1. No, not yet. Again, I am not going to bog this down. We have sought a declaration that this privative clause pursuant to Dunsmuir can't apply to unconstitutional acts, and that is all I will say about it. The law is clear on that.

JUSTICE AALTO: Yeah.

MR. GALATI: Now the Charter. I am not going to suggest to you that this is, with respect to the – not just the section 7 in the equality provisions both as a structural underpinning to the Constitution and section 15 of the Charter. I am going to use the words of the Supreme Court about substantive equality.

This issue is more complicated than meets the eye with respect to section 15, but I am first going to give you a summary of what the Charter arguments amount to.

At tab 39 of my authorities there is a case that is often neglected when equality rights are argued. It is the Winner case from the Supreme Court of Canada, 1951. I will give you the references, pages 22 and 23 and page 32. Very briefly, what Winner was somebody who wanted an extra-provincial bussing licence from New Brunswick to go to the other provinces and it was denied. And it was denied because the operator was a foreign citizen, a American through a corporation, Israel Winner.

What the Supreme Court of Canada decided in Winner pre-Charter was that what underlined our constitutional framework was an equality of citizenship, unless the rights deprived went to the issue of whether or not you were a citizen.

So if you were a permanent resident or an alien, then you didn't have equality rights. But if you were a citizen, including a corporate citizen – this corporation was incorporated in New Brunswick – then you have a right to equality of treatment.

That is not difficult to understand if we look at the articulation of the history of our Constitution in the Supreme Court of Canada's decision in Quebec secession reference. It's impossible to fathom, your honour, that in a constitutional democracy that is based on the rule of law, constitutionalism, federalism, respect for minorities, that underlying all of that in a one-vote, one-person democracy, that you wouldn't have equality as an underlying principle. And Winner says this. It doesn't articulate it that way, but basically Winner says this pre-Charter.

In a constitutional democracy based on a system of one person, one vote, equality has always been an underlying constitutional imperative, quite apart from section 15 and the invocation of an individual's rights to equality on the analogous or enumerated heads.

This equality provision as it speaks to human capital and services and expenditures has been further codified in our patriated Constitution in 1982 in section 36. If I can turn to that for a second at tab 2 of the book of authorities, and over to section 36. Part III of the *Constitution Act*, 1982 is called "Equalization and Regional Disparities: Commitment to Promote Equal Opportunities." Thirty-six says:

"Without altering the legislative authority of Parliament or the provincial legislatures or the rights of any of them with respect to the exercise of their legislative authority, Parliament and the legislatures together with the government of Canada and the provincial governments are committed to, (a) promoting equal opportunities for the well-being of Canadians; (b) furthering economic development to reduce disparity in opportunities; and (c) providing essential public services of reasonable quality to all Canadians.

"Two, Parliament and the Government of Canada are committed to the principles of making equalization payments to make sure that provincial governments have sufficient revenues to provide reasonably comparable levels of public services at reasonably comparable levels of taxation."

Earlier my friend said that the human capital expenditures of which my clients complain which are not being effected through interest-free loans under section 18 of the *Bank of Canada Act* have nothing to do with the feds because health, education, all that is provincial jurisdiction. We live in a complicated constitutional framework. Yes and no.

We have a constitutional requirement of equalization which binds the federal government. The federal government has the spending power under the Constitution,

and so it's too quick and easy to say that matters under provincial jurisdiction do not involve the federal government.

Perfect example? The Finlay case. It is in the book of authorities. The Finlay case dealt with Mr. Finlay taking objection with how the province of Manitoba spent monies sent to it by the federal government in this court. And this court had jurisdiction to deal with it because it is part of the equalization structure of our Constitution. Prior to this – prior to this, pre-Charter, let's call it pre-*Constitution Act*, 1982, apart from –

JUSTICE AALTO: I can stop you for one section, Mr. Galati? I want to make a note of Finlay, tab 63.

MR. GALATI: Finlay was dealt with on a non-constitutional basis, but the principle still applies. He was complaining about provincial action with respect to federal funds.

Prior to this enactment of section 36, and even prior to the equalization payments coming into effect, this was effected through the Bank of Canada. Even when the equalization payments came into effect under Prime Minister Trudeau, the Bank of Canada provisions augmented the equalization.

When we are talking about – when I get to it, when we are talking about equality, it's not restricted here and it is pleaded and you may not see all of that in my pleadings, but it's not restricted to the individual section 15 rights.

Really, in the context of this claim, Mr. Krehm's and Ms. Emmett's personal section 15 rights with respect to all of this really stem from the structural imperatives of our constitutional framework under section 36. And prior to that, the spending power of the federal government which it partially effected through section 18 (i) and (j) of the *Bank of Canada Act*, when it set up during the Depression. For what? For this very purpose, to float interest-free…

JUSTICE AALTO: Loans to the –

MR. GALATI: Loans, and that is how we paid for World War II. That is how we paid for the St. Lawrence Seaway. That is how we paid for the Trans-Canada. It's in the pleadings.

The idea that this is unconnected human capital expenditure because it may when it gets off the ground fall under provincial jurisdiction doesn't mean that the feds have nothing to do with it. It stems from the *Bank of Canada Act* and then later section 36 of the *Constitution Act*, and in between as well the spending power, which has been recognized the courts, of the federal government.

Now I am going to move down to how this affects the section 7 and 15 Charter rights of individuals. You have that at paragraphs 16, 17, 18, 19, and through, of my factum.

I will take it in two parts. First I will do section 7.

JUSTICE AALTO: Okay.

MR. GALATI: Paragraph 16 says, with respect to paragraphs 16 to 23 of the defendant's submissions, the plaintiffs state that their section 7 rights are engaged with respect to seeking declaratory relief and damages as follows: (a) by reduction, elimination and/or fatal delay in health care services; (b) reduction, elimination, et cetera. And that is in the statement of claim in paragraphs 27E and 47A.

Then at paragraph 17 it is further submitted that the available and/or restriction of medical services has been determined by Supreme Court of Canada to constitute a section 7 Charter interest. And we know that from Chaoulli.

JUSTICE AALTO: Mm – hmm.

MR. GALATI: And it is further submitted that all reduction and elimination in human capital expenditures, such as health, education, libraries, the arts, et cetera, directly diminishes the quality of life of the plaintiffs, and in certain instances, actually endangers it physically and psychologically, which are section 7 protected.

Over the page, paragraph 18 it says it's further submitted that the defendants have also pleaded a specific increased gulf between the rich and poor, the disappearance of the middle class, which has led and continues to lead to deteriorating socio-economic conditions resulting in threats to their physical and psychological well-being through increased crime and other socio-economic evils with resulting threat, degeneration, and devolution of society.

I pause again to say am I going to be able on behalf of my clients to prove this? Maybe not.

JUSTICE AALTO: That was certainly going through my mind.

MR. GALATI: Okay, but does that mean it is not a fact?

JUSTICE AALTO: Pretty wide, embracing statement.

MR. GALATI: But that doesn't go to the sufficiency of the fact. It's a fact that is provable. It's not like – let's address Operation Dismantle head on. Operation Dismantle, the Supreme Court of Canada said it is not a provable fact, it is not a provable fact that deterrence increases the risk to the safety of Canadians by stockpiling nuclear weapons and that the non-proliferation of nuclear weapons in fact increases security. The Supreme Court says it's not something you can prove one way or the other. It is speculation.

Well, on socio-economic issues, half the case law and constitutional law has to do with heads of power which relate to this action. We can prove what banking policies do. We can prove what increased crime does. We can prove what a reduction in social services does. That is not a non-provable fact. In Chaoulli they proved that what they were doing with the health care system was endangering people's lives.

Now, you can't expect me to prove that in a statement of claim, because if I did you would strike it for pleading evidence.

These are not non-provable facts. Are they complicated? One may see, at first blush, without actually knowing what evidence we intend to lead that they may be difficult to prove; that is no reason for striking. The jurisprudence says you can't strike for that reason.

On section 7, I will briefly take you through a few brief passages, the Singh decision at tab 36. Physical and psychological integrity are section 7 protected.

My clients say that because of the actions and because of the ceasing to provide these loans and because the true revenues are not presented to Parliament and a proper debate cannot be had on what to do with the money that we are taking in, that over the – as my friend says, over the last 40 years since they stopped giving these loans, Canadian society and services have devolved.

It's not rocket science to say that it's provable that that has an effect, in the same way we have had royal commission enquiries on the effect of racism in the criminal justice system, of lack of funds for this and that. These are provable facts.

You recall, and it's in my authorities, the courts have dealt with such things as the anti-inflation reference, with wage and price controls. I am sure you are old enough –

JUSTICE AALTO: Mm – hmm.

MR. GALATI: – like me to remember that. That is a complex financial socio-economic issue that the Supreme Court of Canada had no problem adjudicating. This is no more, no less complex.

With respect to the section 7 Charter interest and rights, tab 36, page 19 of same, paragraph 47, they are into the discussion of whether or not section 7 protects from just physical harm. And the court rejects that,

and says it protects also from psychological harm. Then paragraph 48, they see support from that from a lower court decision in Collins. And they quote from Collins.

The Supreme Court ends paragraph 48 to say:

"It is noteworthy that the applicant had not demonstrated that his health had been impaired; he merely showed that it was likely that his health would be impaired. This was held to be sufficient to constitute a deprivation of the right to security of the person under the circumstances."

I have plead for my clients why and how the ceasing of these loans has led to a reduction and/or elimination of health, education, et cetera, and the negative effect it has had on society and the psychological anxiety that it causes them and all Canadians, in certain respects, through increased crime and all that.

I can prove, I can prove for my clients that lack of programs will lead to increased crime. I have pleaded it. That is a provable fact. That endangers their psychological security in having to walk the streets where they live.

In Morgentaler, at tab 37, the Supreme Court also – I'm sorry that my photocopier has wiped out the typed page numbers, but at page 6 of that extract, Morgentaler, the last paragraph on page 6, again with respect to the abortion laws, cited psychological impact as a section 7 Charter-protected interest. The court says:

"A woman's decision to terminate her pregnancy falls within the class of protected decisions. It is one that will have profound psychological…"

And I underline:

"…economic and social consequences for her."

I do that because there is an assumption that somehow in constitutional litigation, in Charter litigation socio-economic interests are never to be discussed. That is not true. Chaoulli is a prime example. Anti-inflation reference. Finlay. A lot of these cases deal with socio-economic issues. We do not shy away from them just because they are socio-economic. Nor do they become, as my friend would suggest, pure political issues because they are socio-economic, and I took you through Chaoulli where the Supreme Court says that.

JUSTICE AALTO: Mm – hmm.

MR. GALATI: Tab 38, Rodriguez, to the same effect, that psychological impairment is protected.

I plead these facts at paragraph 27, 47(a), 48 and 49 of the statement of claim.

Then, of course, at paragraph 19 I have extracted a different portion of the Vriend decision that goes to the psychological integrity because of the minister's inaction, and I will leave that with you. It's extracted there. I will leave that with you.

With that, I will move to the section 15 or the equality provision.

JUSTICE AALTO: So the issue is what is the comparator – where is the inequality if, as Mr. Hajecek said, all taxpayers are treated equally?

MR. GALATI: I will get to that right now. I want to take you through the layers of inequality.

JUSTICE AALTO: All right.

MR. GALATI: First I have taken you through the structural requirement of equality under the Constitution under Winner, and under section 36 of the *Constitution Act*, 1982.

Keeping in mind that this is a proposed class action – it might not go that way, but at this stage it is a proposed class action, clearly there are two – the first level of unequal agreement includes all the citizens of Canada. It's the one I mentioned to you before. The Bank of Canada, despite its enabling legislation, is giving private banks, private individuals money at a far favourable rate than its own citizens. It gives them money through the Bank of Canada which the commercial banks then turn around and loan our government, and we pay through the nose at commercial rates.

So the first level of discrimination and abdication of the structural imperatives of equality of citizenship is that the minister of finance and the government is treating its own citizens unequally to other private individuals, i.e., the commercial banks, to the citizens' detriment in having to pay that back through taxation. That is the first level.

The second level, I am going to argue that Withler doesn't need a comparator group, but I will give you a comparator group. And this will come out in the certification motion. I plan to bring evidence on this on certification. There are subsets of Canadian citizens who heavily rely on the human capital infrastructure spending that has been historically effected through the Bank of Canada, and is supposed to be effected through equalization payments, who are disadvantaged vis-à-vis those members of Canadian society who are wealthy enough not to need it.

So if you can fly to the States and get your health care, even though you are – you know, you are in a better position than a person who relies on the human capital infrastructure that was embedded in the creation of the Bank of Canada and section 36 of the *Constitution Act*, 1982. So there will be all sorts of groups – the elderly, the traditional disadvantaged socio-economic classes – that need these programs for their very physical and psychological survival.

My friend is going to say in reply that economic status is not an enumerated ground. He is wrong. Everybody is born into and dies with a socio-economic tag. You are middle class. You are a yuppie. You are a yippie. You are an aristocrat. You are well-to-do. You are independently wealthy. There is no member of society on whom a socio-economic tag does not attach.

Does that mean that that member of society is always attached to that socio-economic tag? No. But does that mean that that is not an enumerated ground? No. A Christian can convert to Judaism can convert to Hinduism can convert to Islam. But what never changes is every individual has a religious belief, even if it's atheism.

So your socio-economic status is with you as an inalienable characteristic of a human being in any human society, from the cradle to the grave. The fact that it changes – you can be born poor and be rich; you can be born rich and be poor – does not change the fact that everyone has a socio-economic tag attached to them.

And so the comparator group is those who are socio-economically disadvantaged by the minister of finance's obstinate refusal to abide by his constitutional duties, both under the *Bank of Canada Act* and under the budgetary process.

Will I win? I don't know. But is this a frivolous argument? With all due respect, no. It is not frivolous or vexatious or argument without merit.

Where are the terms of justiciability? I have set those out. I have set those out.

If members of Canadian citizenry who rely on these programs are disadvantaged because of either race, religion, or it is just mere socio-economic status, section 15 is engaged. Did I fail to sufficiently plead it? Maybe, but I think that might go to an amendment of particulars. I think I did sufficiently plead it. Maybe my friend didn't understand it, and maybe I didn't make myself understood, and I apologize, but it's there.

As you know, I am not going to take you to the test, pleadings have to be generously read.

But to say there is no section 15 interest there is simply not so.

JUSTICE AALTO: A question flowing from that is does one of these disadvantaged groups of which you are making the comparison, are they a necessary party to a proceeding such as this or are they subsumed within the group that would be the class the plaintiffs intend to represent?

MR. GALATI: They don't have to –

JUSTICE AALTO: Can they be separately –

MR. GALATI: They may – for instance, my two biological plaintiffs are, respectively, 97 and 80 years old, so for instance they might invoke senior citizenship as a group, but they don't have to. They don't have to because they are walking around and their society is devolving, is becoming crime ridden, has all sorts of evils because of the lack of this statutory requirement that is being ignored. So their psychological integrity is affected, as is the quality of other members of society.

In an action for declaratory relief, the plaintiffs do not have to be directly affected in every aspect of claim. I didn't bring the cases, but there is clear case law from the Supreme Court on that.

Dr. Henry Morgentaler was never going to give birth; Mr. Borowski was never going to have an abortion, but they were the plaintiffs in those cases. So it's the law that is the subject of the analysis, under the Constitution.

And so with that, I guess you are pushing me to the standing issue.

JUSTICE AALTO: It's an interesting issue.

MR. GALATI: I am ready to go there.

JUSTICE AALTO: Whichever way you want to go. You have given me headlines, and my notes make sense.

MR. GALATI: I have extracted the section 7 and 15 argument and it finishes at page 17. What the new trend in Withler with respect to section 15 talks about, it talks about substantive equality, and I think I have made enough arguments, for the purposes of this motion – let me put it at that – on that issue.

You don't really want to hear me on whether or not this court has jurisdiction, writ large, do you?

JUSTICE AALTO: Not really.

MR. GALATI: Thank you, so I will skip that.

JUSTICE AALTO: I think I have a pretty good handle on what this court can and cannot do.

MR. GALATI: Thank you. Let me go to naming the particular ministers. What you said earlier in these proceedings is generally true, your honour, but with respect, not in this case.

JUSTICE AALTO: Okay.

MR. GALATI: Because they are not being named in their nominal capacity.

JUSTICE AALTO: They are being named in their representative capacity?

MR. GALATI: They are not being named. They are the guys who are making these decisions. The minister of finance under section 14 of the *Bank of Canada Act* runs the Bank of Canada, ultimately. His decisions are – he can issue directives. Under section 17 the minister of finance holds all the shares. So it's not that he is – what we are challenging is – we are challenging is what his underlings are doing, but it is under his direction.

He is there right in the middle of this litigation, and as is this minister of national revenue, that may be the minister, if this goes forward, compelled to provide what my clients say is the constitutional requirement to the minister of finance so he can present it to the Parliament, the actual revenues.

Because it's not the minister of finance who administers the tax credits before the fallacious revenue is set out, it is the minister of national revenue. So they are both there for that reason.

Let me take you to a decision of Madam Justice Reid in Liebmann – you have seen this before at another point – at tab 45. Liebmann, paragraphs 51 and 52.

In this court, she makes the obvious observation that although this is the law in most cases when you are dealing with constitutional issues, the minister can properly be named and sometimes should be named.

We have seen this before, obviously, in the *Air Canada v. AG of BC* case with the attorney general. I am not going to take you to that case again. We see this again in Khadr where the minister of foreign affairs is personally named. He is one who is supposed to ask them, to get him out of Guantanamo.

In these cases where the minister is not simply the representative defendant or respondent where the minister himself or herself are the ones making the decisions as is pleaded in the statement of claim, then the minister is a proper party. Because this is, what is at issue here is constitutional challenge.

I'd ask my friend if he is saying that the attorney general is one of ministers who shouldn't be named, because I will get to that as well. Or is he just referring to the minister of finance and minister of national revenue; Peter?

MR. HAJECEK: I don't think there are any allegations against the attorney general.

MR. GALATI: Because I was going to take you through the clear case law from this court that if a declaratory proceeding is brought, the attorney general has to be named. There is no choice. If you want me to take you through that case law, I will.

JUSTICE AALTO: That's all right. Got it.

MR. GALATI: Standing. I want to be clear in my submissions so I am not misunderstood. Mr. Krehm and Ms. Emmett, as Canadian citizens and taxpayers, do not rely on public interest standing for their constitutional challenge. They have a right to no taxation without representation, which does not depend on public interest standing.

I want to briefly draw a distinction for your honour between the Thorson line of cases and the McNeil line of cases, which are so-called – they are referred to as so-called ratepayer cases.

JUSTICE AALTO: Mm – hmm.

MR. GALATI: That expression is taken from the American jurisprudence. When we are dealing with public interest standing on ratepayer cases, it is a scenario goes as follows: I am a taxpayer; I am a ratepayer. I don't like that road they built down the road, or I don't like the libraries or I don't like this or that. And it's one removed. It's based on the fact that because they are general taxpayers they can complain about everything.

The Supreme Court of Canada in the Prior (ph) case, you'll recall the Quakers saying they wanted a refund on their portion of taxes on the military budget. They said you can't pick and choose as a taxpayer.

That is where the public interest ratepayer cases go. Where every citizen has a right with respect to being taxed, a constitutional right such as the right not to be taxed without representation, that is not a ratepayer case. Every citizen is taxed. Any citizen of this country can bring this constitutional challenge against the minister of finance on the budgetary process.

Any taxpayer can bring the challenge to the *Bank of Canada Act*. Why? As the pleadings set out, we are running deficits that my clients are objecting to. It's tied to the constitutional right of no taxation without representation, because of the lack

of interest-free loans with respect to the annual deficit.

So with respect to their constitutional rights, they are not public interest – this is not public interest standing. They have a right to bring this application – sorry, this action for declaratory relief.

On the assumption that I don't sway you on that, let's briefly look at public interest standing. How is it they don't meet the three tests set out in Thorson, McNeil, Finlay, and the latest one in the Vancouver Downtown Sex Workers case? The three criteria are, one, serious and justiciable issues. I submit that they have been presented. They are in the statement of claim.

Whether the plaintiff has a real or genuine interest; those are disjunctive. COMER, as well as Mr. Krehm and Ms. Emmett, who are members of COMER, it has been their existence to write and analyze these issues that are before the court. They have a genuine interest in this litigation, apart from their constitutional right to bring this under Dunsmuir, as citizens who are subject to taxation.

Then the last criteria, really, that my friend hopes to hang his hat on: He says it is the MPs who should be bringing this action to the court. With all due respect – I don't want to take you back to my general discussion – the MPs don't hold the Constitution in their back pocket. The justiciability and standing on a particular issue on constitutional issues of public importance doesn't reside with the lawmakers in Parliament. I doubt that an MP would have standing to bring this challenge. He is a member of the House of Commons. He can deal with it in the House of Commons.

JUSTICE AALTO: Only in his capacity as a citizen and a taxpayer.

MR. GALATI: Right; that's right.

JUSTICE AALTO: On the basis of your argument.

MR. GALATI: If that distinction were made; that's right, that's right. Yes.

Now, my friend says there are people better suited. He hasn't told you who, apart from the MPs, which I submit is a nonsensical proposition. Again, citizens, according to the Supreme Court of Canada, have the vested interest in the Constitution, not parliamentarians or the legislatures or the governments. It's the people's constitution, under the AG of *Nova Scotia v. AG of Canada* decision and all the other decisions that follow.

Is there anybody, is there another proposed suit or reasonable way to bring this to the court? Who is going to bring it to the court, under the act? The minister, if he requests the bank to give him the loan, but the bank refuses? The minister is refusing to request, and that is pleaded. Consistently since 1974, the minister refuses to request these loans. So the minister is not in a position to bring this action against himself. Only members of the public, citizens are suited to bring this constitutional proceeding.

There is nobody else in sight than my clients because of their genuine interest and their knowledge and expertise as a think tank, and two individuals who have been writing on this for 40 years are well suited.

So even though I say they have a right of standing, even if you were going to apply the public interest standing, they more than meet it.

JUSTICE AALTO: I see your point.

MR. GALATI: Lastly, the Federal Court of Appeal in the Apotex case at tab 67 at paragraph 13 says that a motion to strike is not always the best juncture to determine standing. I would submit this is the type of proceeding or case where the standing issue is not best decided on a motion to strike. Why? Because it presupposes conclusions based on the facts that are pled, based on the evidence which has not yet been presented, and it assumes things in a weighty and at some junctures complicated action. And so the issue of standing should not necessarily be decided now. The Court of Appeal in Apotex said at paragraph 13:

"It is not always appropriate for motions to strike to be the context to make a binding decision on a question of standing. Rather a judge should exercise her discretion as to whether it would be appropriate in the circumstances to render a decision on standing or whether a final disposition of the question should be heard with the merits of the case."

That is what the Court of Appeal said in Apotex.

JUSTICE AALTO: There is still a gatekeeper function to this particular motion.

MR. GALATI: Sure.

JUSTICE AALTO: In keeping actions that really have no ultimate possibility of success from cluttering the courts.

MR. GALATI: I agree, and I would submit that this is not one of them. The facts pleaded and the nature of the examination and analysis proposed has already been done in Anti-Inflation, in Finlay, in Chaoulli, and half of the entire constitutional case law in my walls in the Supreme Court Reports: What is margarine? What are the constituent elements of margarine? Who gets to put these goods in these trucks and put them across the border? Half our constitutional law is on socio-economic, health, and education issues.

JUSTICE AALTO: Mm – hmm.

MR. GALATI: This is not new territory that we are pounding a path on.

Again, with respect, my friend and the court would have to presume the outcome of evidence they haven't seen, notwithstanding that the facts are properly pled and the area of adjudication has already been analyzed and ruled upon by the various courts of this country.

I would say one other thing, that the proper interpretation of a public act, particularly on monies and expenditure and taxation, is always, always justiciable by the courts, particularly when there are constitutional dimensions to that justiciability. Otherwise we don't need the courts. Otherwise the courts would not be the lever that balances the rule of law and constitutionalism under the Quebec secession reference.

The last two points, your honour. If you do strike, I will leave it to you, I would want leave to amend, certainly one of two of the concerns – notwithstanding the fact that I think I have properly pleaded for my clients, in terms of particulars I could amend.

And lastly, on the issue of costs, I am wondering, rather than burdening you today, maybe we can make submissions after you issue your ruling.

JUSTICE AALTO: That was going to be my suggestion. We will deal with costs after the fact.

MR. GALATI: Sure.

JUSTICE AALTO: On the leave to amend I am quite familiar with the case law on leave to amend. As I was reading this stuff and preparing, it's possible to strike part and not others, and I have to get my mind around how all the pieces of the puzzle that both of you have been describing for me all day fit together.

MR. GALATI: I take a last submission from Russell Peters and ask my friend to be a man and jump into the bull ring.

JUSTICE AALTO: Thank you, Mr. Galati.

MR. GALATI: Thank you.

Whereupon the excerpt concluded at 1:35 p.m.

*I HEREBY CERTIFY THAT I have, to the best of my skill and ability, accurately recorded and transcribed the foregoing proceeding. – Catherine Keenan, BA (Hons), MA, Computer Aided Transcription.*

# Society in the Age of the Maya

*By Abraham Guerrero Escobar and Orlando Casares Contreras. Museo Regional "Palacio Cantón," Instituto Nacional de Antropología e Historia, Mexico*

Around the year 1000 AD the classic Mayan world was dying. At that time, in a different world, European chiliastic saw the signs of the end of times in astronomical matters as well as in the origin of eclipses or comets, or corrupt political figures as feudal lords, Lords of the Church, Kings, etc. Each and every one of the members of the society were subjects for use as signs of the end times by their enemies.

Time is an abstract notion but time is essential to understand each other. "What is time, but if someone were to ask me this I could not explain it," Saint Augustine admitted, and he was father of the Christian concept of time. Hence up to the evolution of common places in our civilization with phrases such as "men of his time" the concept of time is full of questions. Today we try to understand the time from powerful cognitive arsenals based on modern science, but it remains clear that this is not sufficient to understand the individual and collective experiences of our time.

In a recent article published by the BBC news (2011) informed us of a people of the Brazilian Amazon, the Amondawa, that do not have words to express notions of time as month, year past, future or even the very idea of time in their vocabulary. It is not that the Amondawa do not understand time, because they are perfectly capable of expressing it in Portuguese, but culturally have no need to express it.

What the article does not speak about is on the myths of origin of this town, how they reflect their identity and their permanence in the world through expressions, such as dance, chants, rituals, because precisely there neuroscientists will find the form in which life of the Amondawa passes, since the world was created.

We passed the year 2000 of the Christian era. No obvious sign of the announced end of time appeared in the world unless we consider our sinful action as species, and our fierce development against the planet.

It is as if suddenly all our societies wanted to see in the natural disasters, in the disasters that we ourselves as species provoke, in the increase of the solar activity or in any other event that affects our everyday life, are signs of the Apocalypse.

Apparently all cultures have imagined principles and the end of the cosmos. In contemporary popular culture the end of the world has become a product that helps to sell books, videos and magazines. Supposedly the Mayan prophesied the end of the world in December 2012, and that has helped create an industry of enormous profits.

To speak about predictions between the Mayan prophecies is delving into the principles of the complexity of its religious thought. Currently the debate between archaeologists, ethnologists, epigraphers and other specialists on the basic principles of the Mayan religion are heated. Here we introduce some of the basic aspects of the Mayan religion which are necessary to understand the ways in which their various prophetic discourses have been developed.

To begin, it is important to recognize that when we talk about Mayan prophecies we are talking about different stories both temporally and spatially. Pre-Hispanic prophetic texts are different from there which proliferated after the arrival of the conquistadors, both in its contents as in its dates. And in terms of geography, the Maya lived and inhabit different areas so the use of prophecies corresponds to political, religious and social interests.

It is worth mentioning from the start that there are differing interpretations about the dates which the Mayan calendars located as the end of the world, according to how you correlate the Mayan Calendars and ours. The most common correlations include the GMT and GMT+ 2 given for the "prophecy" dates of 21. and 23. December respectively (GMT or correlation Goodman–Martinez–Thompson; GMT+ 2 based on the same principle but with a setting of two more days). Astronomically speaking, the most appropriate date would be more indicated on the 22nd of December 2012.

**Basic Principles of the Mayan Religion.** The Mayan religion is as vast and complex as any other, so we do not intend to draw up a handbook on their religion but to highlight some points we consider to be important. Any religion, according to Mircea Eliade (2008:23-26), has in the prophetic texts a base that explains the universe from past events, present and future time. In this sense the Mayan culture had and it keeps on having a very rich and complex prophetic tradition.

The corpus of religious Mayan texts, especially those with a prophetic character, are mostly pre-Hispanic writings, or written during the Spanish colony, does not have a homogeneous message but are characterized by its great flexibility around a same speech, date, deity or event. As Mark Van Stone (2010) and Mario Ruz (2002a) suggest, the mind of the Mayans could assimilate different realities according to the time and space where their religion is reproduced.

The ability to adapt has been efficient with the passage of time which represents cultural advantage but also a problem in its analysis since it does not have the homogenous unit as found in the Judeo-Christian traditions, which have as a guiding axis a sacred book and unifying principles which distinguish them from other religious manifestations.

To go on from this apparent religious dispersion of the Mayan world, there is a 'hard core' formed by a group of ideas that endure, with their respective changes, to the passage of time, reproduce and give identity to its members and are found in the rituals, myths, legends and prophecies of those who promote it (Lopez Austin 2001: 49-51).

Casares (2007: 43) proposed that this hard core view of the world has an axis movement, eats all the external influences and is composed of several layers in which the proper pressure of the time and eternal cultural groups makes that some are more durable than others. The hard core of the Mayan cosmovision is always in motion and that's allowing to solve unforeseen problems and continue to adapt.

Other general principles of the Mayan religion lie in the way in which the world is divided spatially. This particular concept has the human being located at its center and hence is part toward the four cardinal directions (Aveni 1991, Casares 2004, Medina 2000). This central point is not only present in the physical layout of the structures, household altars and offerings (Sharer 1998), but it is possible to see it today in rituals, prayers and myths (Ruz 2002b: 325).

This concept implies a spatial ideological order of the material and non-material universe which, in turn, is divided into three basic relationships, manly, man–man, man–nature and man–cosmos (Casares 2004). In this sense, all the deities of the underworld, the celestial guardians and sacred beings of the forests and mountains, from people to plants, animals and celestial and, being part

of their natural environment, are part of this division.

In the Mayan prophetic texts which we will see later, all these elements are present and show us how "hard core" the Mayan cosmovision was adapted to the new changes with the arrival of the conquerors: the Mayan transformed but did not disappear.

The temporary concept of the world is an abstract and mental construction of the human being who is not universal. We commonly rely on calendars that regulate our life in all its aspects to measure time. That's why the astronomical practice based on celestial observation is the main base generating one for the measurement of time. For example, in our culture the calendar was formed from the evolution of the Julian and Gregorian calendars, both based on astronomy. And the fact is, that every culture is so different in its ways of arranging the world as of measuring the time, which can be traced in the language and in the ways we apply the metaphors regarding to time (Cooperrider 2007).

For the Indo-European cultures, time is a fluid passing in which the future lies ahead of the present and the past behind. The Aymara, who live in the mountains of the Andes, give us a distinct idea of how time enters the picture, since for them, the future is not something that will happen, it is rather something unknown, hence it is an aspect that happens to be found behind them and the past – which is known – in advance (Spinney 2005).

Among the Mayan, the time is similar to the Indo-European cultures, although we must mark two moments of conceptualization. One first in its pre-Hispanic past and another after the arrival of the Spaniards who introduce new values in its measurement and conceptualization. In the pre-Hispanic era, the time was divided into large eras, each accompanied by forecasts and predictions. At the end of an era, another starts and so on (De la Garza 2002: 64-67 and 2010: 39-41).

The basic division of time was marked by the movement of the stars, being the basic unit Sun, called Kin, which was also the name of the sun God and one of the most important to the Mayans. Associated with the knowledge, power, Kin was not only the basic unit of time, but with your daily travel directions marked the sacred in each corner was defined by the summer and winter solstices and the center for its zenith, by which time and space were a single unit in the Mayan religion (Casares 2004, De la Garza 2002).

Although this view of time and space was not exclusive of the Maya, they had some specifics that where not shared by other Mesoamerican groups, as a fixed starting point for the beginning of their accounts. For the Mayans, the era began *4-Ahau 8- Kumku*, whose equivalent in the Gregorian calendar is the 13th of August 3114 BC (Aveni 1991 and 2009).

Their accounts were in scores, and used a system of numeric positions – and the number zero – to assign the number value for the place, in such a way that the account starts from 1 at the bottom and to add other positions above, their value is higher.

After the *kin* (a day), was still the *uinal* (20 days), its value was 20 *kino'ob* (o'ob is the morpheme to indicate the plural in maya), there remained the tun (360 days), equivalent to 18 *uinalo'ob*, then the *katun* (7,200 days) which consists of 20 *tuno'ob* and the *baktun* (144,000 days) equivalent to 20 *katuno'ob.*

In general, the majority of the Mayan accounts conclude there because it is where the eras are measured with 13 *katuno'ob* according to the long count. When we say long count, they are usually written five consecutive numbers with a point between them, an example would be 13.0.0.0.0 and means 13 *baktun*, 0 *katun*, 0 *tun*, 0 *uinal*, 0 *kin* equivalent to 1.872.000 (144,000 x 13) days. This was the most common format among the Maya during the classic period, from 300 to 900 AD approximately.

There was no limit to the Mayan calendar's account since this continued with the *pictun* or cycles of 20 *baktuno'ob* (2,880,000 days), the *calabtun*, or 20 *pictuno'ob* (57,600,000 days) until the *kinchiltun* or 20 *calabtuno'ob* (5 million years approximately).

In the Maya cosmovision, the mythical story is so relative that its adjusted to the needs of those who express it. The case of the use of time is not an exception, since it responds to political and religious needs (Van Stone 2010).

Example of this flexibility in time is the way in which the Mayan altering their accounts to make them fit with political and religious events such as the death of a ruler, any war, any birth or some relevant sacrifice, which gave rise to some alleged errors appear in their own calculations in some sites in the Mayan area (Bernal 2010: 47, Van Stone 2010: 71).

**The Prophetic Texts (before and after the conquest).** We know of three Mayan codices, the Dresden, Madrid or Trocortesian and Paris, each receiving its

names by in place where they are kept. All three contain similarities in content, divination and ritual and are written in an esoteric language. They are also the source of information that has prompted greater expectation on the Mayan prophecies. Thanks to advances in epigraphy, it is possible to read the texts of the codices although recognizing some problematic aspects:

1. In the Yucatecan Mayan language words have multiple meanings which change in function of the context in which it is read, this generates also multiple readings of the same text or the same line (Van Stone 2010).

2. The reading not only is according to the texts but it is necessary to take into account the function of the sacred calendar of 260 days, hence the impossibility of precise dates, therefore the prophecies as the omens are very general (Aveni 2009: 45).

3. In the codices, there are six unique terms that indicate future forecasts, referring to terms of drink, food, abundance, sigh, drought and bad (Grube 2010: 35).

4. Some fragments of the codex pages are so bad that it is not possible to distinguish the painted glyphs; in other cases, the content is simply erased by the passage of time.

In these three sources are forecasts on the hunt, the harvest – mainly corn – activities of daily living such as weaving, wars, diseases, rituals for the rain, the accounts of the periods of Venus, solar and lunar eclipses to which they put much attention for being considered as bad omens and other celestial objects. These texts were instruments of divination and forecasts, almanacs of sacred events to be interpreted only by the Mayan priests.

In none of the codices is there a reference to the 22nd of December, 2012, as the end of the world, as it is disseminated in the media. The only event that, in both the images as in the little text that accompanies it, mentions a destructive event, found on page 74 of the Dresden codice, where a flood is narrated; however the exact date and the place where it would be is not depicted (De la Garza 2010: 40)

If the information in the codices is very limited in terms of forecasts, omens and prophecies, in the archaeological context there are fewer references to these events.

Most of the inscriptions, paintings and engravings found on stelae, benches of the temples, in the interior walls and their own ceramics, fall mainly within social and political issues of the Mayan elites as wars with other cities-state, Maya, catches of kings and slaves, succession to the throne by the heir or sacrifices. Few texts refer to mythical events and those that do exist provide exact dates but, indicate a remote past pledge to considerably improve, the lineage appointed chancellor as the natural heir to the will of the gods, and the very gods themselves.

The only archaeological record that refers to the date of the 22nd of December, 2012, is the so-called 6 monument located in Tortuguero, Tabasco. It contains a series of glyphs that narrate different aspects, such as the ruler who erected it in the year 700 AD, and in one of its many fragments is this date mentioned. From the translation by David Stuart arranged by Mark Van Stone (2010) were the following:

*Tzujtz-(a) j-oom u(w) uxlajuun pik (ta) chan Ajaw, ux(te') Uniiw. Ujt-oom Ek'(?).*

*Yem(al) Bolon (Yo)okte' (K'uj) ta (?).*

The thirteenth *baktun* will end (en) *4-Ajaw*, the third of *Uniiw* (i.e., 3-Kankin)? It will happen. (will be) the descent (?) of the nine support (God [is]) to the….

And just when the story seems to tell us something much more concrete we found the rest of the text, eroded by the action of time and jungle. Even so, other fragments of monument 6 are missing so you don't know the outcome of the prophecy, but it doesn't seem to be an end of the world or a catastrophic event.

In Palenque some futuristic texts have been found, that contradict other prophetic scripts of the area and that represent an example of the political use for handling of the calendar which link the divine origin of the city with the governing by their deities. Given the prosperity that the site had when these texts were prepared, it predicts that the lineage of Kinich Janahb Pakal would end after a *pictun,* is celebrated, that is to say, doing the count, in 4772 AD.

This is because most Mayan groups computed the 13.0.0.0.0 as an era, but sometimes did not respect this rule and imposed much larger accounts. Either to a past era so remote, that exceeds the time that astronomers have declared for the beginning of the universe itself, or toward events in the distant future comes the date designated by the Mayans of Palenque.

In the archaeological records, the futuristic texts are mostly forecasts of long periods of power to the governing lineages. Until now there is not a record to bring any obvious catastrophe for its caste, much less to the world as conceived by the Maya. Some calamities are mentioned in the codices, but in the same proportion in which they are mentioned the seasons of abundance, crops and prosperity for each cycle of his time.

The arrival of the Spaniards represented significant destruction to the corpus of the Mayan religious text, but also the incorporation of the Christian thought of the friars evangelizers enriched the hard core of their worldview. In spite of the zeal with which the Franciscan missionaries took care of the Christian orthodoxy and chased the idolatry Mayan the various Mayan peoples could conceal, interlacing and recreating its universe ideological mixed with that of the conquerors.

Religious knowledge and practices became clandestine, but the will to preserve the memory and the prophetic traditions remained as it was reflected in the *Chilam Balam*, heterogeneous texts written in Latin characters in the Yucatan peninsula.

The contents changed. To see a prosperous future for their rulers one happened to predict times of revolt, used the accounts of the 260-day sacred calendar. This also includes forecasts for sowing, births and other everyday aspects, although to a lesser extent than in pre-Hispanic codices.

One of the most representative examples of this kind of text is located in the Chilam Balam of Chan Cah. In the folio 112 is a list of very general forecasts for dates not very specific of their sacred calendar, which read as follows (taken from Grube 2010):

*Bolon Kan*
*Utz, malob, ma kazi u chalbil*
*Labhun chichan*
*Lob, kaz, maix hach kaz xani*
*Buluc cimi…*

A passage from the 53rd folio of the *Chilam Balam* of Chumayel illustrates a few lines in which listed the end of some days *Ajaw* (sacred Lord Ajaw) with their respective predictions, these dates refer to events of the liberation of their cultural group, 1740, 1760 and 2012. Then a fragment for these dates of the prediction (transcribed by Van Stone 2010):

*"The Quetzal will come, the green bird will come. Ah Kantenal [Van Stone translates it as 'the place of the yellow tree'] will come. Blood spewed out will come* (in the earlier prediction of the last Katun 4 ahau, before the conquest). *Kukulkan will come with them a second time. The word of God. The Itzaes will come."*

Other examples of the mythical narratives and the same times that are handled between the Maya during the colony are in the following examples:

"Give us our descent, our succession, while walking the Sun and clarity! That

amanezca, arriving the aurora! Gives us many good roads, flat roads! That the people have peace, great peace and be happy; and give us good life and useful existence! Oh you, hurricane, Chips-Caculha, Raxa-Caculha, Chips-Nanauac, Voc, Hunahpu, Tepeu, Gucumatz, Alom. Qaholom, Ixmucané, Ixpiyacoc, grandmother of light, grandmother of the Sun! That it dawns and the dawn comes!

"So they said while they saw and invoked the output of the Sun, the arrival of the aurora; and at the same time what they saw invoked the Sunrise, they watched the Morningstar, the precursor star of the Sun that illuminates the vault of heaven and the Earth's surface, and lights up the steps of the men created and formed."

Part three, chapter IV of the *Popol Vuh*

"Gone are the days for enabling us; we had no sound judgment. At the end of our loss of vision, our shame, all will be revealed."

**The *Chilam Balam* of Chumayel.** As *Popol Vuh* tells us, there was nothing before the origin of the world, "everything was on hold, all calm, silent." The old stories of the Quiché speak to us of origin of the world in a very synthetic way:

"There was the original book, written in ancient times, but their view is hidden to researcher and thinker. Great was the description and the story of how it ended up forming all of heaven and Earth, how it was shaped and divided into four parts, how it was designated and sky was measured and brought the rope to measure and was extended in heaven and on Earth, at the four corners, at the four corners…."

The end of this mythical story is about its origin, which in turn will represent the new origin and therefore also an end.

The prophetic texts written in pre-Hispanic do not explicitly point to any worldwide catastrophe. To see some examples of the prophetic messages above, its language is very ambiguous, broad and do not indicate precise dates, even in every Mayan group, the messages are different, as they respond to specific needs for each one.

**The Contemporary Mayan.** Mayan prophetic tradition did not have many changes during colonial times, because it was linked to the agricultural activity. At the beginning of the 20th century as at the end of it, the ethnographic work in different areas showed divination mostly for farming practices, from an almanac based on the 260-day calendar (each represented by a bean, piece of

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# Classifying Calories

*By Martin Bruegel, The New York Times, September 19, 2012*

Ivry-sur-Seine, France – Starting this week, McDonald's is posting calorie information for all items on its menus across the United States, part of a movement to improve diets and reduce obesity by providing nutritional data. New York City has mandated that chain restaurants post calories since 2008, and the federal health care law adopted in 2010 will eventually require fast-food restaurants across the United States to do so.

While the alarm over obesity is fairly recent, the notion of using "scientific" knowledge to guide the dietary habits of ordinary people – particularly the less well-off – is not. The fate of earlier campaigns suggests that it will take much more than calorie information to change food ways.

Nutritional recommendations were born at the end of the 19th century with the discovery that humans need 20 calories per pound of weight each day. 55 to 65 percent of this energy intake ought to come from carbohydrates, a quarter from fats and something over 10 percent from proteins.

These guidelines did not emerge only from scientific inquiry but also from a desire to maximize efficiency. In 1888, the American chemist Wilbur O. Atwater devised a series of formulas to help people get the most energy from the least food. Economics and physiology would be joined in what he called "the pecuniary economy of food." Atwater pioneered a movement that came to be known as "scientific eating."

The notion appealed to French physicians, who had been looking for ways to improve working-class health and budgets. They believed that these households spent too much on meat and alcohol. Their program of "rational eating" aimed to instruct the poor to keep food expenses within the limits of their (modest) budgets. They urged the substitution of protein-rich legumes for red meat, pasta for sausages, and sugared beverages for wine.

These reformers believed that ignorance was the problem and information the solution. Nutrition facts were put next to the items on the menu cards in factory canteens and in working-class restaurants. Scales at the entrance to eating places helped customers to monitor their weight. A menu board, listing carefully calibrated culinary options, would allow workers to assemble nutritious meals from a set of limited options.

The program flopped – except in prisons, where lower calorie supply per inmate induced savings – as French workers continued to enjoy their sausage and wine. It did manage, though, to raise eyebrows in the United States. "If Paris does not know how to eat," a Chicago newspaper asked in 1912, under the headline "Pessimism in Paris," "who would?"

Yet Americans embraced the fad. In 1914 the New York State Board of Health introduced a "scientific restaurant," where staff luncheons were made according to "the most modern dietary theories." Restaurants across the country began to list energy and protein content on their menus.

Childs Restaurants, an ancestor of today's global fast-food chains, provided "a complete lesson in dietetics, mathematics, food conservation, patience, economy, and patriotism and a meal thrown in for good" to its clientele. The demands of World War I made efficiency even more imperative. (Some thought the calorie counting went too far; *The New York Tribune* bemoaned the "mystery cult of the calorie.")

By 1920, Americans were so calorie-conscious that a romance novel, Ethel M. Kelley's "Outside Inn," featured calories as a prominent theme. In 1924, the Restaurant Owners' Association toyed with providing diners with printed advice on well-balanced meals "from the point of view of calories."

None of these initiatives lasted. For European and American consumers, hearty and palatable meals outweighed scientific formulas every time.

The history of "scientific eating" offers several lessons. Nutritional campaigns can succeed in influencing consumer behavior only if they take into account the sensual joys of eating. The French continued to eat their red meat and drink their red wine because rich meals gave them a sense of belonging to a community. Similarly, American consumers after World War II saw access to plentiful, ever cheaper and ever less healthy foods as proof of the American promise – even if the impact on their waistlines, and well-being, has been disastrous.

In an era of stagnant wages, dystopian politics and cultural anomie, eating indulgent if unhealthful food has become a last redoubt of enjoyment for Americans who don't

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Maya *from page 19*
shell or coins) were events of rains, drought, pests and other aspects that influence the crops and livelihoods of the Maya.

With the arrival of the mass media, changes were more rapid. This led to agriculture occupying a less important place and the practice of divination is focused towards labour and personal relationships of those consulted. Although from the pre-Hispanic and colonial era cures were not unrelated to the predictions, this activity rebounded and date occupies the first places among those who practice this tradition.

With the arrival of the so-called prophetic end of the world by 2012, both domestic and (mainly) foreign tourists, have sought to hear word by some characters of Maya origin its version as facts. This resulted in a commitment to the industry that not only promotes but also sells products and services derived from the prophecy.

In this case, some Mayan priests and-or Mayan people who had never exercised such a charge, were proclaimed connoisseurs of the prophecies. They offer rituals and products and for a few dollars or Mexican pesos, to its initiates, prepare their coming disasters or in its absence, announce the shifts in consciousness. The service is as varied as the version offered on the events for the date. This does not mean that all Mayas or some of them are unaware of the true meaning, but the current situation has provided an opportunity for many to market its identity.

In a more extreme case, a group of families of Italian nationality contacted a so-called Yucatec Mayan priest (the Mayan priest is known as H'meen in a Mayan language). Instructed on the end of the world will be in December of 2012, compared land in the community of Xul, in the South of Yucatan, to build several 'bunkers' that protect them from such apocalyptic situation.

The past few years, have seen a number of changes by the media to promote tourism in the Yucatan peninsula. Is this an announcement of the end of the Mayan culture? Indeed, divinatory practices to follow its normal course between the Mayan priests, by turning around their ceremonies and agricultural rituals, as well as concerning aspects of their daily lives.

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Calories *from page 19*
feel they have much control in their lives.

Higher incomes and better educations – in the classroom, not on the menu board – will do more to solve the obesity epidemic than mandating the disclosure of calorie counts. Before we blame the poor and the overweight for their inability to manage their budgets or control their appetites, we might want to think not only about the foods they encounter in the supermarket and on television but about a culture that relies ever more on unhealthy foods to breathe meaning and purpose into everyday life.

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**Our Comment.** The real command of price controls can be dealt with by a popularized acceptance of controls like simplification. To match that, of course, there would have to be a simple rejection of the warning ruling out the use of appropriate price controls. *W.K.*