

March 19, 2004

Petition For the Redress of Violations of Human Rights Guaranteed by The American Declaration of the Rights and Duties of Man, Inter-American Commission on Human Rights

Jeffrey C. Tuomala, *Liberty University*

IN THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

PETITION

**For the Redress of Violations of Human Rights Guaranteed by
The American Declaration of the Rights and Duties of Man**

Inter-American Commission on Human Rights
1889 F Street, N. W.
Washington, D.C. 20006
USA

PETITIONER:

James Roger Demers
3310 Blewett Road
Nelson, British Columbia, Canada
V1L 6V6

ARTICLE 28. REQUIREMENTS FOR THE CONSIDERATION OF PETITION

a. Name, nationality and signature of persons making the denunciation:

James Roger Demers, the petitioner making denunciations, is a national of Canada. (Mr. Demers' signature appears at the end of this Petition.)

b. Whether the petitioner wishes that his or her identity be withheld from the State:

The petitioner does not request that his name be withheld from Canada, the state against which this denunciation is made.

c. The address for receiving correspondence from the Commission and, telephone number, facsimile number, and email address:

James Roger Demers
3310 Blewett Road
Nelson, British Columbia, Canada
V1L 6V6

Telephone: (250) 354-1508 (work)
Telephone: (250) 354-4749 (home)
Facsimile: none
Email: jim_demers111@hotmail.com

d. An account of the act or situation that is denounced, specifying the place and date of the alleged violations:

Violations of the petitioner's freedoms of expression, were committed in British Columbia, Canada, in 1996, when he was arrested, jailed for seven weeks awaiting trial, and subsequently convicted and sentenced for breach of the *Access to Abortion Services Act*. This *Act* outlaws even the most peaceful communication with women in the proximity of abortion clinics and carries a sentence of up to one year in prison and a \$10,000 fine. Violations of the right to life of hundreds of thousands of Canadian children have taken place throughout Canada since 1988, when the Supreme Court of Canada removed all protection of law from unborn children. A more detailed account of the violations is set forth below at pages 5-10.

e. If possible the name of the victim and of any public authority who has taken cognizance of the fact or situation alleged:

The victims include James Roger Demers. Of those hundreds of thousands of unborn children who have been given names, they are for the most part known only to their mothers. The names of some women who are victims of Canada's action are known or discoverable but disclosure of their names is not necessary in order to fully investigate and decide the issues at hand.

Virtually every Canadian public official who has held office since 1988 is aware of most of the violations of the right to life alleged in this Petition. Most of the offending officials in this case are identified in sections below. The following member of the Canadian Parliament is not implicated in these human rights violations, but has taken cognizance of all the facts and situation alleged:

Garry Breitkreuz
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f. The State the petitioner considers responsible, by act or omission, for the violation of human rights recognized in the American Declaration of the Rights and Duties of Man:

Canada is the state responsible for violating the rights of Mr. Demers and hundreds of thousands of unborn children and their mothers. The primary rights which Canada has violated as recognized in the *American Declaration of the Rights and Duties of Man* are the following:

- Art. I. The right to life. (children)
- Art. II. The right to equal protection under law. (children)
- Art. III. The freedom of expression of and dissemination of ideas. (Demers)
- Art. VII. The right of special protection of women during pregnancy. (mothers)
- Art. XIII. The right to participate in the benefits of scientific discoveries. (children and mothers)
- Art. XVII. The right to be recognized as a person having rights and obligations. (children and mothers)
- Art. XXII. The right to associate with others. (Demers)

Art. XXIX. The right to fully form and develop personality. (children)

A brief explanation of why petitioner believes that Canada has violated these rights in set forth below at pages 10-12.

g. Compliance with the time period provided for in Article 32 of these Rules of Procedure:

The Supreme Court of Canada dismissed Mr. Demers' Application for Leave to Appeal a decision of the Court of Appeal for the Province of British Columbia on September 25, 2003, and sent notice of the judgment to the parties on September 26, 2003. Docket No. 29632 (September 25, 2003).

h. Steps taken to exhaust domestic remedies:

Mr. Demers was jailed for more than seven weeks awaiting trial, and then was prosecuted and convicted for violating the *Access to Abortion Services Act* in a trial which commenced on October 20, 1997, in the Provincial Court of British Columbia at Vancouver. Judge McGivern convicted Mr. Demers of "sidewalk interference" and "protest" contrary to the *Act*. Ct. File No. 14490-02-c at 2 (December 19, 1997).

The Honourable Mr. Justice Hood, in the Supreme Court of British Columbia, by a judgment dated August 3, 1999, dismissed Mr. Demers' appeal, upholding the decision of Judge McGivern. Docket No. CC980044 (August 3, 1999).

The Honourable Mr. Justice Low, writing for the Court of Appeal for British Columbia, dismissed Mr. Demers' appeal in his Reasons for Judgment dated January 17, 2003. *R. v. Demers*, 2002 BCCA28; Docket No. CA026297 (January 17, 2003).

With the Supreme Court of Canada's denial of Mr. Demers' Application for Leave to Appeal all of Mr. Demers' legal remedies afforded by Canadian law have been exhausted.

i. An indication whether the complaint has been submitted to another international settlement proceeding:

Mr. Demers has not submitted the subject of this complaint to any other international settlement proceeding nor is he aware of any other similar complaint made against Canada pending in any other international settlement proceeding.

AN ACCOUNT OF THE ACT OR SITUATION THAT IS DENOUNCED

a. Mr. Demers' Arrest

On December 6, 9, and 10, 1996, Mr. Demers stood quietly on the public sidewalk outside Everywoman's Health Centre in Vancouver British Columbia ("Clinic"), holding a sign which simply stated: "Every human being has the inherent right to life. *United Nations International Covenant on Civil and Political Rights*." On December 11, 1996, at the same place, Mr. Demers stood holding a different sign:

Every person has the right to have his life respected. This right shall be protected by law, in general, from the moment of conception. *Art. 4-1 American Convention on Human Rights*.

There was no evidence of any verbal or other exchange between Mr. Demers and any patients or Clinic personnel entering or exiting the Clinic while he was outside it. Nor was there any evidence of anyone being offended or upset by the sign or his presence. Despite the peacefulness of Mr. Demers' activity the Clinic reported him to the police. Police came to the Clinic on December 11 and confronted Mr. Demers who was described as cordial and cooperative.

For these peaceful acts police arrested and charged Mr. Demers with "protest" under the British Columbia *Access to Abortion Services Act (Act)*. They later added a further criminal charge of "sidewalk interference." Under the *Act* "protest" includes any act of disapproval of abortion to include informing a person about abortion-related issues. "Sidewalk interference" includes "attempting to inform a person concerning issues related to abortion services." Mr. Demers admits holding the signs promoting the protection of all human life. For these actions he was convicted as a criminal.

Mr. Demers was not the only person arrested at the Clinic. Police also arrested Mr. Maurice Lewis who carried a different sign, but who actually spoke to women entering the clinic, encouraging them not to abort their unborn children, and offering them help. There was no evidence of anyone behaving in other than a peaceful and respectful manner. Maurice Lewis was tried first. The *Lewis* case spanned several weeks and the record of trial was nine volumes long. Because the facts of the *Lewis* and *Demers* cases were essentially the same, the parties agreed to adopt the record of trial from the *Lewis* case as the evidence in Mr. Demers' case. The following

section provides a summary of the evidence bearing on the denunciations made in this petition.

b. The Record of Trial

Most abortions are done for non-medical reasons. Women seeking abortions often feel pressured to have abortions or are “sacrificing themselves” for someone else. Many women are coerced into having abortions and do not choose freely; some because they do not have sufficient information. Witnesses at trial who had abortions were not made aware of the availability of either pre-abortion or post-abortion counseling.

Many women are uneasy with their decisions and are open to discussion and guidance right up to the last moment. Clinic Staff admitted that some women who come into the Clinic change their minds. Many children scheduled to die are alive because of their mothers’ contact with a pro-life counselor.

Pro-life advocates inform women about abortion and the alternatives, offer emotional and financial support, and try to persuade them not to terminate their unborn children. They give out pamphlets accurately depicting and describing the stages of development of the unborn child. Women have thanked pro-life advocates for their kindness, and expressed gratitude for offers of help and concern.

Dr. Marie Peeters of the famed Lejeune Institute for Genetic Research in France gave expert testimony on the early development and humanity of the unborn child. No Crown witness denied the rapid development of the unborn child in the womb, nor did any deny that abortion ends the life of a human being. Abortion service provider, Ms. Joy Thompson, admitted that the fetus is “a human being not yet born.” However abortion service providers discounted the humanity of the fetus in their counseling.

Crown witness Dr. R. E. K. Hudson indicated that informing women on the development of unborn children prior to an abortion is inappropriate. Dr. Hudson has been instrumental in the government’s plan to expand abortion services throughout the province. Clinic counseling is done by individuals with no medical training who claim to explain all medical risks. Abortion providers refuse to recognize any significant psychological problems arising from abortion.

The Crown’s evidence confirmed that the essential purpose of abortion-clinic counseling is to affirm women to go through with an abortion. Abortion counselor Ms. Erin Mullan stated, “Women will feel an abortion is a loss,” and admitted that the loss was the loss of a human life.

Psychiatrist R. Philip Ney testified that abortion severely harms women psychologically and emotionally. Ms. Patricia Hansard, founder of Abortion Recovery Canada testified to the same. The harm is a direct psychological consequence of deliberately killing one's own children.

Ms. Joy Davis, a former director of six abortion clinics, testified to callous, careless and dehumanizing treatment of women by abortion providers. The primary goal of abortion counseling was to encourage women to decide for abortion and sign the consent form. The abortion providers' response to pro-life activity was anger because it encouraged women to change their minds. To get rid of the protesters, it was a tactic to lay false complaints to police, claiming harassment and noise that disturbed the patients.

c. Abortion in Canada

Historically, Canada, like all countries in the Americas, provided legal protection for unborn children. This began to change in 1969 when the Trudeau government amended the *Canadian Criminal Code* to allow "therapeutic" abortions to preserve the "life or health" of mothers if approved by two doctors. As a result, 11,152 unborn children were legally killed in hospitals in 1970. That number had increased to 70,023 in 1988. During the period 1970-1988, over one million children were aborted.

In 1988 the Supreme Court of Canada, in the case of *Morgentaler, Smoling and Scott v. Queen* [1988] 1 S.C.R. 753, 148 D.L.R. (4th) 332, struck down Section 251 of the *Canadian Criminal Code*, thereby completely removing all protection of law from unborn children. By 1992 the number of abortions exceeded 100,000 per year. In 1999 there were 142,026 fewer births in Canada than there had been in 1959.

Joyce Arthur of Canada's Prochoice Action Network boasts that Canada stands alone as the "only democratic, industrialized nation in the world with no laws restricting abortion." However, Canada does not find itself totally alone in the community of nations. There are three others – North Korea, China and Vietnam – which also have no laws protecting unborn children. "Different Foundations, Diverging Futures: The Abortion Climate – Comparisons Between Canada and the USA," <http://www.prochoiceactionnetwork-canda.org/difficult.html>.

There are absolutely no restrictions in Canada on killing unborn children. Right up to the moment of birth they may be killed through the notorious procedure called partial birth abortion. There are no requirements that even full-term children be anesthetized to alleviate the pain before

they are poisoned, burned or cut into pieces. A child abused through the mother's drug use or maimed in the womb has no cause of action against its parent once it is born. The state refuses to intervene to stop *in utero* abuse. Even a child who is wanted by its mother is not protected by Canadian law against murder. Canada has totally abdicated all duty to afford protection of law.

The Province of British Columbia has not been content with mere failure to protect unborn children. It has gone a step further, passing legislation designed to ensure that expectant mothers do not receive information about the nature of abortion. Pursuant to the *Access to Abortion Services Act*, British Columbia adopted the *Abortion Services Access Zone Regulation* establishing a 30-metre zone around abortion clinics. The *Act* and *Regulation* criminalize even the most peaceful, polite communication of information regarding abortion to expectant mothers within 30 metres of an abortion center.

d. Judicial Proceedings

The basic factual circumstances leading up to and surrounding Mr. Demers' arrest were not in dispute at trial. At trial and each level of appeal Mr. Demers argued that the charges should be dismissed because the *Act*, as written and applied, violates certain fundamental human rights that are guaranteed by the Canadian *Charter* and that have parallel guarantees in international law. These fundamental rights are the freedom of expression and the right to life.

1. Freedom of Expression.

The Canadian *Charter* guarantees the right of freedom of expression in section 2 which states:

2. Everyone has the following fundamental freedoms:
 - (a) freedom of conscience and religion;
 - (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
 - (c) freedom of peaceful assembly; and
 - (d) freedom of association.

The trial judge, all of the appellate judges, and even the prosecutors involved in the *Demers* case and in the *Lewis* case have agreed that the *Act* violates section 2 rights to freedom of expression. However, section 1 of the Canadian *Charter* provides the government a mechanism for derogation from most, if not, all fundamental rights. It states:

1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Mr. Lewis defended his actions before Judge Cronin based on freedom of expression arguments. Judge Cronin agreed that Mr. Lewis' rights had been violated, and because the Crown was unable to prove that the *Act* was a reasonable limit "demonstrably justified in a free and democratic society," he dismissed the charges. *R. v. Lewis*, [1996] 18 B.C.L.R. (3d) 218 (Prov. Ct.) (January 23, 1996). Justice Saunders, of the Supreme Court of British Columbia, allowed the Crown's appeal in the *Lewis* case holding that the *Act* was a justifiable restriction on the freedom of expression. Because Mr. Lewis died while his appeal to the Court of Appeal for British Columbia was pending, his case was dismissed as moot. *R. v. Lewis*, [1996] 24 B.C.L.R. (3d) 247 (S.C.) (October 8, 1996).

The trial court and appellate courts in British Columbia ruled against Mr. Demers' freedom of expression defense on the same grounds that Justice Saunders ruled against Mr. Lewis. The courts refused to determine whether unborn children have any value that must be taken into account when engaging in a section 1 balancing test.

The Crown failed to present any evidence that Canada was in a state of war or other duly declared national emergency that would justify derogation from fundamental freedoms under the international law of human rights.

2. Right to life.

Mr. Demers based his defense on section 7 of the *Charter* as well as section 2. Section 7 states:

7. Everyone has a right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Mr. Demers argued at trial and each level of appeal that the *Act* was unconstitutional because it violates the right to life of unborn children. Canadian *Charter* jurisprudence recognizes the standing of a defendant to challenge the legality of a statute that violates the rights of another person. At the trial level, Judge McGivern ruled against Mr. Demers on the right to life defense concluding that "everyone" as used in section 7 of the *Charter* does not include an unborn child of a woman who chooses to abort her child. This leaves room for a finding that a wanted child is included in the term "everyone."

Mr. Demers' appeal was made before Justice Hood of the British Columbia Supreme Court. Justice Hood ruled that: "a woman has the absolute right to terminate her pregnancy, and

she cannot be deterred by any right of the unborn child because it does not possess any rights until it is born.” He also held that the term “everyone” in international law does not include the unborn and that the term “everyone” in section 7 of the *Charter* does not include the unborn.

Mr. Demers then appealed to the Court of Appeal for British Columbia. That Court ruled against Mr. Demers. The Court of Appeal expressly ruled that the term “everyone” as used in section 7 of the *Charter* does not include unborn children. However, the Court in an opinion written by Justice Low implicitly acknowledged what most courts in Canada have acknowledged – that unborn children are human beings. The Court quoted the Canadian Supreme Court decision of *Morgentaler* for the proposition that “any preference of foetal rights over the rights of the pregnant women . . . is a matter best left to the careful consideration of the legislators.” In short, Parliament has the power to confer rights on unborn children because they are human beings. This is consistent with the record of trial, which includes extensive evidence that unborn children are human beings. Even witnesses for the Crown testified on cross examination that unborn children are human beings.

VIOLATIONS OF HUMAN RIGHTS

The violations of international human rights laws as recognized in the various sources in the Americas parallel those that Mr. Demers argued under the Canadian *Charter*. They are the rights of expression and life. Canada is a member of the Organization of American States and therefore is subject to the *American Declaration of the Rights and Duties of Man*. Although Canada is not bound in the strictest sense by the provisions of the *American Convention on Human Rights*, such fundamental rights as expression and life could not mean something different under the *Convention* and the *Declaration*. The Inter-American Commission on Human Rights acknowledged in the *Baby Boy* case that the right to life under section 4 of the *Convention* and Article 1 of the *Declaration* must mean the same thing.

a. Article IV, Right to Freedom of Expression.

The *Declaration*, in Article IV, recognizes the right “of the expression and dissemination of ideas.” Although the *Declaration* does not specifically identify certain rights as non-derogable and others as derogable (a distinction that Article 27 of the *American Convention on Human*

Rights expressly makes), this concept is implicit in Article XXVIII of the *Declaration*. As a party to the *International Covenant on Civil and Political Rights (ICCPR)*, Canada accepts the distinction made between rights from which derogation is allowed and those from which no derogation is allowed, and also the necessity of an official declaration of public emergency that threatens the life of the nation before derogating from any right. See Article 4, *ICCPR*. In order to balance competing interests a tribunal must place weights on interests. This, the Canadian courts refused to do. They refused to acknowledge any value of unborn children whatsoever. As a result the Canadian courts have rendered it impossible to weigh the competing interests involved in deciding rights to freedom of expression. Even if an unborn child is not recognized as being a juridical person its life must have some inherent value that must be considered in weighing competing interest in the context of rights of expression.

The Canadian courts have acknowledged that the value of speech depends at least in part on its content. Mr. Demers' right to freedom of expression against abortion cannot be weighed against competing interests under the Canadian *Charter* without first identifying those interests and determining their value. In this case Mr. Demers didn't yell. He didn't even speak. He simply held up a sign that quoted an international human rights treaty. Promotion of human rights is something that everyone has a duty to do.

In this case competing interests cannot be weighed unless the nature of unborn children as human beings is acknowledged and their value assessed. The Canadian courts erred by failing to expressly acknowledge that unborn children are human beings, and, therefore, the courts never assessed their value.

b. Article I, Right to Life.

Canada remains alone among democratic nations with its failure to offer any protection whatsoever to unborn children. It has violated and continues to violate the right to life of more than two million human beings. It has failed to protect an entire class of human beings based on birth status. This is a direct violation of the *Declaration*, which calls upon all people to promote human rights. Canada allows one class of people the absolute discretion to kill another class of people without any protection of law.

Although there are proper bases for treating some human beings or groups of human beings differently from others under the law, the state can never justify denying any human being

or group of human beings all protection of law. The language of the international human rights treaties makes no such distinction between human beings entitled to juridical status as persons and human beings not so entitled.

c. Ancillary Rights

Both the right to life and freedom of expression are recognized in Canadian and international law. These are the two core rights that have been violated. The *American Declaration of the Rights and Duties of Man* expressly recognizes several other specific rights which in this case are ancillary to the core rights of life and freedom of expression.

The international jurisprudence of the Americas makes it clear that no human being is to be deprived of juridical personhood. When an entire class of human beings is cut off from the most basic protection of life the members are necessarily deprived of other rights. They are denied equal protection of law (Article II) and recognition as persons having rights (Article XVII). The *American Declaration* recognizes that human life exists on a continuum of development (Article XXIX). Lack of full development of human potential does not serve to cut off human rights, it entitles one to special protection of the right of development.

It is widely recognized that the right to freedom of expression is not simply for the benefit of the speaker. Benefits inure to society generally and to other individuals. Pregnant women are particularly vulnerable and in need of protection (Article VII). In the *Demers* case there was ample evidence that boyfriends, family members, abortion clinics and the Province of British Columbia joined forces to pressure the woman and withhold critical information and support from her. They all had something to gain in taking advantage of her. Boyfriends continue to have access to sex without responsibility or commitment, family members avoid shame and inconvenience, abortionists profit handsomely and the Province avoids added social costs, or so it thinks. The mother is denied the benefit of scientific discovery regarding the nature of the life of her child (Article XIII) and she is denied association with those who care about the physical, emotional and spiritual impact that killing her own child will have on her (Article XXII).

Mr. Demers is not a criminal. He was doing exactly what international law calls upon all to do—promote and defend human rights.

RELIEF REQUESTED

It is respectfully requested that the Commission make a finding of admissibility of the petition, register the case and initiate proceedings on the merits.

DATED at _____, this ____ day of _____, 2004

James R. Demers

Petitioner