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Petitioner's Observations (December 2007) 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

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IN THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

PETITIONER'S OBSERVATIONS (DECEMBER 2007)

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

No. P225/04

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

PETITIONER'S OBSERVATIONS ON CANADA'S ADDITIONAL INFORMATION OF AUGUST 21, 2007

No. P225/04

1. Canada acknowledges that the *Access to Abortion Services Act* violates Mr. Demers' right to freedom of expression as articulated in Article IV of the *American Declaration of the Rights and Duties of Man*. (Paragraph 57, Page 18, Canada's additional information of August 21, 2007.)

2. Canada recognizes that the freedom of expression is a right of fundamental importance. (Paragraph 88, Page 26.) Only truly extraordinary circumstances could justify arresting a person for silently holding a sign that quotes a human rights treaty while standing on a public sidewalk in broad daylight in a perfectly peaceful setting.

3. Canada argues that truly extraordinary circumstances justified Mr. Demers' arrest: he exercised that right outside the entrance to an abortion clinic. Canada claims that its interest in facilitating abortion outweighs Mr. Demers' right to freedom of expression which he exercised in order to encourage women not to abort their children.

4. Canada asserts that arguments regarding the "morality of and health effects of abortion" are irrelevant when determining the value of Mr. Demers' speech. (Paragraph 55, Page 18).

4. On the other hand, Canada claims, in determining the value of the interests it is protecting, that abortion is simply a "legally provided medical service." (Paragraph 88, Page 26; Paragraph 90, Page 27.) Canada repeatedly asserts in its defense the legality of abortion as a lawful medical procedure. (Paragraphs 68, 69, 70, 87, 90, 92.) If Canada's assertion that abortion is a lawful medical service is false, its whole defense collapses. The relevant question is not whether abortion is legal under Canadian law. Canada asserts that under its domestic law abortion is simply a lawful medical procedure. The question is whether it is a lawful medical procedure under the international law of human rights. Canada has made no attempt to justify it under international law.

5. Canada first argues that the legality of abortion is irrelevant to this case. Canada then proceeds to base its entire defense on the simple assertion that abortion is a lawful medical procedure. Canada cannot have it both ways.

6. Because Canada's defense of its violation of Mr. Demers' fundamental human rights hinges on the lawfulness of abortion as a simple medical procedure, it bears the burden of proving that abortion is lawful, not under Canadian law, but under international law. It has made no attempt to prove or argue that its actions are lawful. It simply makes an assertion that abortion is a lawful medical service. That approach may satisfy Canadian

courts, but it should not be acceptable before the Inter-American Commission on Human Rights.

7. Canada has admitted that abortions are being committed in Canada, that they are being committed with the full knowledge of the Canadian government, and that they are being committed with the collaboration of the Canadian government. The main element of Canada's defense to violating Mr. Demers' right to freedom of expression is that it was securing the right to a lawful medical service. Canada bears the burden of proving that abortion is a lawful medical procedure. Until it does, it cannot justify its arrest and imprisonment of Mr. Demers.

RELIEF REQUESTED

It is respectfully requested that the Commission make a finding that the *Access to Abortion Services Act* is, on its face and as enforced against Mr. Demers, an unlawful restriction on the right to freedom of expression. It is further requested that the Commission advise Canada of its moral and legal obligation to compensate Mr. Demers for his unlawful arrest, imprisonment, trial, eleven years of legal proceedings, and disparagement of his name.

DATED at _____, this ___ day of _____, 2007

_____

James R. Demers
Petitioner