

Minister of Justice  
and Attorney General of Canada



Ministre de la Justice  
et Procureur général du Canada

The Honourable/L'honorable Allan Rock  
Ottawa, Canada K1A 0H8

NOV 30 1994

Ms. Marian Botsford Fraser  
President  
Ms. Sandra Gwyn  
Chair, National Affairs Committee  
The Canadian Centre International Pen  
Suite 309  
24 Ryerson Avenue  
Toronto, Ontario  
M5T 2P3

Dear Mesdames Fraser and Gwyn:

Thank you for your letter of October 12, 1994, on behalf of PEN Canada, in which you draw my attention to the major postcard campaign against Customs seizures which was recently launched by your association.

While I laud your interest in human rights and freedom of expression issues, I am sure that you understand that it would be inappropriate for me, as Minister of Justice and Attorney General of Canada, to comment on this when you have referred specifically to the Little Sisters case and the Eli Langer case which are currently before the courts. In addition, as these cases remain under judicial consideration, you will appreciate that it would not be opportune to meet with a member of my staff to discuss PEN's position in relation thereto.

Thank you for bringing your concerns to my attention.

Yours very truly,

A handwritten signature in cursive script that reads "Allan Rock".

Allan Rock

Canada

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BILL C-128

Whereas PEN Canada opposes the sexual exploitation of children and the production of material that advocates, glorifies, or condones the sexual exploitation of children;

And whereas the language of Bill C-128 (child pornography and corrupting morals) passed by the House of Commons is vague and overreaching, and will have a chilling effect on writers who wish to depict persons under the age of 18 involved in so-called "explicit sexual activity";

And whereas existing Criminal Code provisions are already applicable to material which the courts may hold to be obscene on the grounds that it unduly exploits sex, and this includes material that uses children as its subject matter;

PEN Canada reminds Prime Minister Kim Campbell and Minister of Justice Pierre Blais that freedom of expression is protected in the Canadian Charter of Rights and Freedoms. The Charter states: "Everyone has the following fundamental freedoms: ...freedom of thought, belief, opinion and expression, including freedom of the press and other media of information."

PEN Canada therefore calls upon Prime Minister Kim Campbell and Minister of Justice Pierre Blais to modify Bill C-128 to ensure that the fundamental principles of free speech and freedom of expression are respected.

Resolution unanimously adopted  
at the PEN Canada Annual General Meeting  
June 21, 1993

## ARTIST'S WORKS CHARGED UNDER NEW CHILD PORNOGRAPHY LAW

Eli Langer  
Artist  
Toronto, Canada  
1993-1995

Parliament unanimously passed the controversial child pornography bill C-128, June 23, 1993. Child pornography, as now defined under the revised section 163.1 of the Criminal Code, is the visual representation of explicit sexual activity involving anyone (or their genitalia) who is or who is depicted to be under 18 years of age. This includes any written material that counsels or advocates such activity. To create, possess, or distribute child pornography is a criminal offence. Exemptions exist for works of artistic merit, or of an educational, scientific or medical purpose – the onus rests on the accused to prove its legality. Section 164 gives the crown the right to seize offensive works for trial. The law was hastily drawn up and passed out of rising concerns over child exploitation and sexual abuse, but it dealt with the depiction of these crimes rather than the crimes themselves. A case soon arose exemplifying the restrictions on freedom of expression this law imposes.

*critics say*

In December 1993, 5 paintings and 35 sketches were seized by police from the Mercer Union gallery for infringement of the child pornography law. The works by young Toronto artist Eli Langer showed sexual engagement between children, and sexually suggestive scenarios between children and adults. They have been variously described as haunting, purposefully shocking, vivid, dreary, sophisticated, juvenile, beautiful. Langer insisted he drew from his imagination, and had not used child models. While the charges against Langer and the gallery owners were dropped, the artwork itself was held for over a year in a trial to determine whether or not they should be destroyed. Under debate: its artistic merit, and the larger issues concerning the use of child images by pedophiles and the constitutionality of the new legislation.

While the judge found the child pornography legislation a clear infringement of the right to freedom of expression, he accepted this as a “reasonable limit”, justified because of the greater issue of child protection. The judge also ruled against the seizure of material by police censors/critics without a court order. The arguments put forward by artists and critics in favour of the works’ artistic merit were accepted, based on community standards. The works were therefore cleared of pornography charges under the proviso for artistic merit.

An application for appeal was submitted to the Supreme Court of Canada in autumn 1995, requesting a constitutional inquiry into the unresolved issue of the infringements of Sections 163.1 and 164 on the Charter of Rights and Freedoms. Specifically, whether the limit placed on free expression is reasonable given the “vague provisions and over-broad terms” of the child pornography definition, and its potential impact on artistic expression. The Crown’s right to seize materials without prior evidence that their “unconditional suppression is either justified or necessary,” while laying the burden of proof as to the works’ legal artistic merit on the defendant, was also questioned. The application for appeal was denied. The child pornography law stands.

At Issue:

PEN's argument before the court: legislation is an unconstitutional limitation on freedom of expression.

From letter to editor, G&M, Robin Metcalfe, Writers' Union of Nova Scotia:

It is always inappropriate, in a free society, to use the criminal law to censor images and texts. ...In passing [Bill C-128] with indecent haste in the last Parliament, despite the vigorous objections of civil-liberties advocates, our political leaders of all parties are guilty of gross irresponsibility and of pandering to prejudice and misinformation. The present moral panic about "child pornography" has rendered it difficult and even dangerous to make distinctions – between acts and their representations, between consent and abuse, between children of seven and young adults of 17, and between criticism and criminal prosecution....Censorship has never eliminated underground pornography. It does, however, interrupt the democratic conversation and imposes outrageous risks on artists, writers, publishers and gallery administrators, many of whom struggle in conditions of near poverty to make challenging ideas available to the public.

From PEN Newsletter, May 1995, Notes from the Chair, Marian Botsford Fraser:

[The judge's] premise seems to be the courts are the proper place to discuss such things. Surely the place for such debates is street corners, classrooms and living rooms; the freedom to create, to express and to agree and disagree should reside with the citizenry, not the courts.... How long will it be before an artist or a writer takes the artistic risks Mr. Langer took, in exploring a difficult subject like child abuse? And how long then before another artist or writer is subjected to the anguish, ignominy and cost of a trial, simply to prove that artists and writers not only have the right but the responsibility to address problems troubling society?

Action taken

AGM resolution against Bill C-128	June 21,1993
Letters sent June 26, 1993 to Prime Minister, Official Opposition, Leader of the NDP,	
Justice Minister,	reply August 9,1993
Opposition Justice Critics	reply August 5, 1993
Letters sent January 13, 1994 to Attorney General, Ontario,	reply Feb.18,1994
Minister of Justice, Federal,	reply March 3,1994
AGM resolution against Bill C-128	May16,1994
Letters sent June 17,1994 to Cultural Critics Suzanne Tremblay, Francine Lalonde, and Jan Brown	
Intervention in Criminal trial	

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January 13, 1994

The Honourable Allan Rock  
Minister of Justice  
The House of Commons  
Ottawa, ON K1A 0A2

Dear Mr. Rock,

With reference to the pending prosecution of the artist Eli Langer, and also of Sharon Brooks, director of the Mercer Union Gallery in Toronto, under the provisions of Bill C-128 of the Canadian Criminal Code, PEN Canada once again goes on record as deploring this legislation.

As the Canadian chapter of an international association of writers, editors and publishers, we step outside our normal boundaries within the literary community to register this protest. But as an organization committed to human rights and freedom of expression, we believe that this first prosecution of a practising artist under C-128 has grave implications for artists in all disciplines. Along with other representative and broadly-based organizations, including the Canadian Bar Association, the Canadian Conference of the Arts, the CBC, and the Writers Union of Canada, we strongly opposed Bill C-128 prior to its passage, and communicated our concerns to your predecessor as Minister of Justice in the previous government. At our annual general meeting on 21 June 1993, a resolution deploring it was passed unanimously. This resolution was prefaced by the following statement: "PEN Canada opposes the sexual exploitation of children and the production of material that advocates, glorifies or condones the sexual exploitation of children." In the body of the resolution, we addressed the substance of the bill. "The language ... is vague and over-reaching, and will have a chilling effect on writers..." Like other opponents, we also predicted an inevitable clash with the rights to freedom of expression guaranteed in the Canadian Charter. (A full text of this Resolution is attached.)

Much sooner than anyone could have predicted, this clash has occurred. Yet the present crisis, however painful to the individuals involved, may also prove to be an opportunity. Thus we urge you strongly to undertake an immediate review of this legislation, with a view to its amendment.

Yours sincerely,

A handwritten signature in cursive script, appearing to read 'Alison Gordon', written in dark ink.

Alison Gordon  
President, PEN Canada

**Notes from the Chair**  
**Marian Botsford Fraser**

**This has been a busy, vigorous, healthy year** for PEN Canada. It would not have been so without the work and support of four groups of people: a very hardworking board, our excellent staff, the large number of volunteers

who made our events so successful this year, and several individuals in the community at large.

Internationally, we have dealt with thirty honorary members, but with special focus on the case of Ken Saro-Wiwa, to whom we dedicated this year's Benefit. Thanks to the overall success of that night, and the generosity of The Body Shop (Canada) in giving us a donation of \$30,000 for our work on the Saro-Wiwa campaign and our other writers-in-prison, we were able to send \$10,000 Cdn. directly to Saro-Wiwa's defence fund. It is rare that PEN Canada is able to give money in this way, and we could not have done so without the support of The Body Shop and the generosity of everyone at the Benefit.

Practical, concrete support from individuals and companies in the larger community is, I think, the foundation of the future financial health of PEN. Similar examples: the support of George Butterfield and his company Butterfield & Robinson in getting us through the first six months of the past year, also underwriting our computer upgrade and our first direct mail campaign; the longterm support, in the form of book sales or book bags, of Frans Donker of Book City; the events we do every year with the help of Upper Canada Brewery, Imprint and the

University of Toronto Bookstore, and of course the extraordinary commitment and energy and involvement of Avie Bennett of McClelland & Stewart in suggesting, devising, underwriting, publishing, marketing and selling *Writing Away*.

Partnerships with companies will happen only if we recognize that the literary/artistic community and the so-called "corporate world" are not antagonistic solitudes with fundamentally different value systems. It's a stone that generates many circles; entrepreneurs with enlightened policies working with organizations like PEN Canada can help convince the Canadian government that Canadians are not indifferent to human rights and that our foreign policy should reflect a commitment to addressing human rights abuses as well as lucrative trade deals.

Another example of PEN/community partnership is the new Writer-in-Exile residency at Massey College at the University of Toronto, a program that will be formally announced at a press conference once the steering committee has chosen a writer for the program. This initiative is being funded in its first year by PEN, Massey College, the University of Toronto and Christopher Ondaatje. You will hear more about this program once it is fully designed and in place, and also

about a special fundraising project linked to the Writer-in Exile program.

An update on other concerns: the Little Sisters trial has ended; we await the judgement. The judgement has come down in the Eli Langer case. Justice McCombs valiantly attempted to do a balancing act on the fine, wobbly line of public opinion. His vigorous acceptance of the artistic merit of Mr. Langer's work, professional humility before artists and critics defending those works, and articulation of the artistic merit defence and its application in a forfeiture case serve at first glance to reassure the Canadian artistic community. So too does his ruling that police should not act as critics and censors by grabbing books and paintings from bookstores and galleries without a judge's court order issued at the judge's discretion. This ruling properly puts responsibility for a serious infringement of rights onto the courts.

But the judgment is laced with conservative reservations and underwired with murky logic. Justice McCombs finds that the child pornography legislation is clearly an infringement of freedom of expression rights guaranteed by the Charter, and then accepts infringements as "reasonable limits," because of Parliament's intention to protect children. He ties the notion of artistic merit to the comfort blanket of community standards. And he insists that the flawed and overly broad definition of child pornography is justified because child pornography is in itself a terrible thing.

Thus Mr. Langer's works are by definition child pornography, saved only from destruction by their artistic merit. Yet Mr. McCombs also states that any image at all of young partially clothed children could be used as stimulation by paedophiles. Does this potentially turn soap commercials into pornography?

No one denies that protecting children is a

necessary thing. But is prosecuting artists an effective means of doing so? Is criminalizing the depiction of legal sexual activities by Canadians a reasonable way to stop the production of pornography or the abuse of children? Is the personal documentation of sexual activity on videotape, for neither artistic, educational, scientific, or medical purposes, only pornographic?

Justice McCombs seems incapable of imagining a non-pornographic explicit depiction of sexual activity between young people. His premise seems to be the courts are the proper place to discuss and decide such things. Surely the place for such debates is street corners, classrooms and living rooms; the freedom to create, to express and to agree and disagree should reside with the citizenry, not the courts.

In the short term, the return of Mr. Langer's works is to be applauded; the image of book burnings recedes. But how long will it be before an artist or a writer takes the artistic risks Mr. Langer took, in exploring a difficult subject like sexual abuse? And how long then before another artist or writer is subjected to the anguish, ignominy and cost of a trial, simply to prove that artists and writers not only have the right but the responsibility to address problems troubling society?

Justice McCombs concludes that the legislation was "carefully designed", but the fact that the test case of this legislation is that of an artist undermines its validity. Good intentions do not good legislation make.

I sign off now -- I hope to write a book or two like a truly respectable writer. My very, very heartfelt thanks to the Board and staff who have all been energetic, committed, supportive and attentive to everything we have done this year. It has been a great privilege to be the president of PEN Canada. □

## Marian Botsford Fraser goes to court and files this report on the Eli Langer Trial

In a Toronto courtroom in October, five large canvases and a binder of thirty-five sketches were on trial. The paintings were startling and vivid, mostly done in a brilliant red-orange and black; the images were of little girls in sexually suggestive situations with men, one of a radiant, smiling child squatting to defecate; one - the most disturbing to my mind - in chilling black and grey, depicting a man (a burglar?) looking in a window at a child seated close to the erect penis of a man. The sketches could not be seen by the public; some of them portrayed explicit sexual engagement between children, others portrayed sex between children and adults.

In a burst of good intentions and highmindedness during the final months of the Conservative reign in spring of 1993, Parliament created, debated and unanimously passed legislation known as Bill C-128, the child pornography bill. That legislation became the revised section 163.1 of the Criminal Code, in which child pornography is defined, first as the visual representation of explicit sexual activity involving anyone under or depicted as being under 18 (or the genitalia and anal regions of same), and secondly, as any written material that "advocates or counsels" such sexual activity.

The legislation was created to deal with the crimes of sexual abuse and exploitation of children. The child pornography revisions, however, do not deal with *crimes* but rather with the *depiction* of crimes, and even with the depiction of acts that are otherwise legal. It is legal in Canada for persons aged 14 and older to have heterosexual sex; it is now illegal to depict such activity, even in a private journal. (Heterosexual anal sex is legal if you are 18; homosexual sex is only legal if you are 21.)

Thus in December 1993, Langer's works were seized from the Mercer Union Gallery and Langer

and the gallery owners were charged. Subsequently those charges were dropped and the art work itself was held under a forfeiture order. The trial, almost a year later, to determine whether or not the work should be destroyed, lasted nine days and covered not only the artistic merit of the work (the legislation provides for this defence), but also the use of images of children by pedophiles and the constitutionality of the new legislation. There were four intervenors - Canadians for Decency, arguing that the legislation should be upheld, and the Canadian Civil Liberties Association, the Canadian Conference of the Arts, and PEN Canada, arguing that the revised legislation is an unconstitutional limitation on freedom of expression. Lawyer Paul Bennett acted on behalf of PEN. We were allowed to give a fifteen-minute speech. Justice David McCombs has reserved judgment.

If the work of Eli Langer, clearly created for artistic purposes and exhibited in an established and reputable gallery, can be subjected to this process, what artist in their right mind would risk dealing with potentially problematic material? And how is the public good served by this chilling effect? Will there be less sexual abuse of children if artists do not write about it or paint it? Will there be less "real" child pornography (children made to have sex and photographed or videotaped by adults for either private or commercial purposes; such acts deemed illegal elsewhere in the Criminal Code and absolutely unconscionable and reprehensible) if artists and writers do not deal with such troubling subjects, for fear of prosecution?

One need look no further that classics of Canadian literature such as Alice Munro's *The Lives of Girls and Women* (1971), Margaret Laurence's *The Diviners* (1974), and Timothy Findley's *Headhunter* (1993), to find treatments of sexual themes that could fit the definitions of child pornography now known as Section 163.1. The coming of age

literary genre is virtually defined by the sexual awakenings of adolescents. Literature and art consistently deal with issues that are troubling to society; *The Diary of Evelyn Lau* and *The Boys of St. Vincent* are two contemporary Canadian examples. Both of these dramas are based on actual characters and situations. In both cases the depiction of sex is not explicit (no naked bodies, no actual sexual acts) but both films explicitly deal with and show illegal sexual activity. The film by Denys Arcand, *Love and Human Remains* (from the play by Brad Fraser), celebrates adolescent homosexual sexuality. Atom Egoyan's film *Exotica* mostly takes place in a strip club where a young female character (referred to as "jailbait"), in the uniform of Branksome Hall, a Toronto private girls school, repeatedly performs an explicitly erotic dance.

There is also a growing body of literature dealing autobiographically and explicitly with sexual abuse: important Canadian examples are Sylvia Fraser's *In My Father's House*, and Elly Danica's *Don't: A Woman's Word*. Presumably this is not written material that would "advocate or counsel" the acts described therein. But if such a book were to be made into a film, would it then be chargeable?

Only a handful of established, mature writers and artists in this country could afford the risk of prosecution under this legislation -- the enormous cost of legal representation, the loss of income while dealing with the impact of a court case, the paralysing anxiety that surely attends the wait for a verdict. But this legislation is most likely to capture works by young, experimental artists, whose work not only might not meet a standard of artistic merit drawn from mainstream and/or traditional work but may also deliberately challenge norms of taste or boundaries of style and content implicit in such standards. Such artists cannot count on the imprimatur of reputation. It is unlikely that the works on trial in that Toronto courtroom would have been seized had they borne

the signature of Doris McCarthy or Michael Snow (both of whom testified on Langer's behalf).

But to prevent people from writing about or depicting subjects such as sexual abuse is not only to deny freedom of expression to artists. It is also to suppress the legitimate and essential discussion of troubling issues, issues that we must come to terms with as a society. This legislation is an unreasonable limitation on the right to freedom of expression guaranteed under the Charter. One must not only be free to consider good ideas, but also bad ideas and ugly facts, in order to improve society.

Canadians have a high degree of tolerance for protective legislation; we perceive the courts and government as more or less benign; we do not rigorously question the role of Parliament in limiting freedom of expression or the ability of the courts to define as obscene that which might "cause harm". We continue to tolerate the seizure of materials by Canada Customs officials. We seem to expect liberal, fair interpretations of the law. We prefer to legislate against hate literature, because it is ugly and unfair, than to wrestle openly with malevolent ideas. We perhaps undervalue freedom of expression, because we have not had our own freedom to read or write or create seriously challenged.

We should be more vigilant. The fact that the paintings and drawings of an artist have become the constitutional test case and not, for example, videotapes in which real children are forced to have sex, demonstrates the inappropriateness of the new law. It should be re-considered, so that children truly may be protected and our freedom to deal openly, artistically and politically with issues such as sexual abuse are not suppressed.

There is something truly obscene about poking through the works of Alice Munro and Margaret Laurence and Timothy Findley looking for material that might be defined as child pornography. □

# See no evil

Is Eli Langer a child pornographer, a shock artist, or simply a realist? If his paintings are burned, you'll never be able to judge for yourself *By Sandra Martin*

**T**HE FIRST big surprise about Eli Langer is how articulate he is. After the police raided his debut exhibition at the Mercer Union gallery in December and arrested him for producing obscene material, exposing obscene material to the public and being in possession of child pornography, the casual assumption was that Langer is a shock artist who crassly broke sexual taboos in order to sell lots of paintings. Instead, five of the paintings and thirty-five of the drawings are now locked away in a police warehouse. "These were not images made to appease the sexual appetites of adults," Langer insisted over a cup of industrial-strength coffee last January at his walk-up on King West. Langer had moved in only a day or two before—his last studio had flooded when the pipes burst—and the place had the haphazard anonymity of newly occupied space. The only clue to his calling was a pallet smeared with Halloween blacks and blood-orange reds.

Langer is diminutive with chestnut hair cropped close to his skull and a fragile, woebegone appearance. At 26, he looks like a street kid with a roof over his head. He claims he did not use models or photographs in the series of eight paintings and fifty drawings in the Mercer Union show. They were all pulled from his imagination in "two-and-one-half years of effort to address both personal and social issues." He emphatically denies that he is a pornographer, insisting that he is merely representing something that already exists in our society. "I'm trying to understand it through the creative process, which for me happens to be drawing and painting. For another artist it could be video, for somebody else it could be writing or telling a story, or making a *Boys of St. Vincent* television program."

The Mercer Union raid was triggered, as even Metro police will say, by complaints registered after a 350-word review of the show in *The Globe and Mail* on December 14 by arts reporter Kate

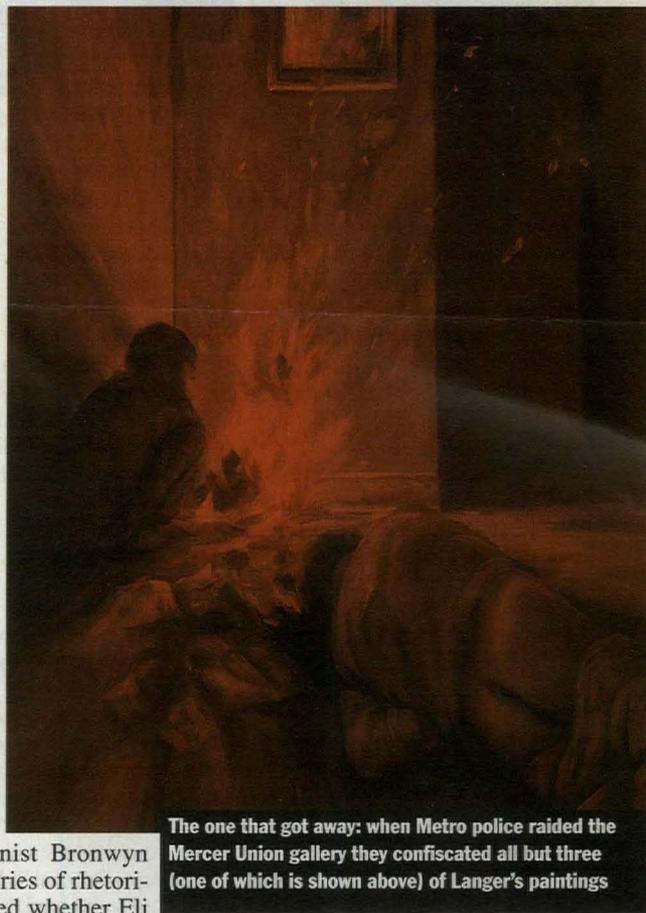
Taylor. She described the "purposefully shocking images" of "what you and I know as illegal," in which "children are not portrayed as victims but rather as willing participants," as a "dreary catalogue of don'ts (children masturbating, performing fellatio or bugging each other)." Taylor concluded the "whole show is a self-conscious, juvenile prodding of its own excrement."

What followed was a media fracas with opinions colliding and exploding faster than fireworks on a computer screen saver. Very few of the pundits lined up on opposing sides of the ensuing censorship debate had seen Langer's work. Most of them merely repeated Kate Taylor's descriptions, changing a word here and there to avoid any whiff of plagiarism.

In *The Toronto Star*, in a column headed SEX BETWEEN KIDS AND ADULTS IS ABUSE, NOT ART, a sex offender rehabilitation counsellor named Corey Jones lumped Langer's paintings in with the Holocaust and the "grisly endings" of Kristen French and Leslie Mahaffey, while in *The Globe and Mail*, columnist Bronwyn Drainie posed a bizarre series of rhetorical questions that pondered whether Eli Langer's work would still be art if it were reproduced on a postcard, or blown up on a billboard, or included in a "what's-new-in-town" segment of the supper time television news, as though the artist is eternally accountable for the appropriation of his or her images. Is the *Mona Lisa* not still art after the image is reproduced in a computer ad? Even Kate Taylor wrote a long, silly and self-indul-

gent apologia in the *Globe*, justifying her review and arguing for "free speech for Eli Langer...and for Kate Taylor."

As for Langer, he "was shocked like crazy" about the reaction to the exhibition, which made him the most talked about artist in Toronto, even the country. Does Michael Snow net editorials in *The*



The one that got away: when Metro police raided the Mercer Union gallery they confiscated all but three (one of which is shown above) of Langer's paintings

*Globe and Mail*? Langer owes his celebrity or, to be more accurate, his notoriety to the fact that he is the first artist to be arrested under Bill C-128, the child pornography law that was passed in June 1993, after a hasty debate, during Kim Campbell's brief tenure as prime minister. For the first time, the law has abandoned community standards and defined child pornography as photography, film,

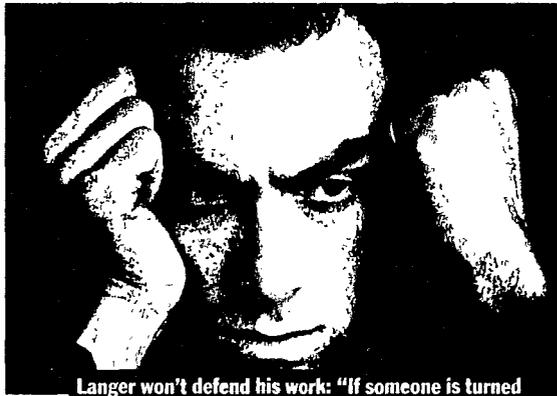
videotape or any other visual material that shows "explicit sexual activity" involving people under the age of 18, or people who are depicted as under 18. By those standards, the CBC broke the law on March 13 when it aired *The Diary of Evelyn Lau* because actress Sandra Oh portrays Lau as a 15-year-old prostitute engaging in explicit sexual activity with her adult customers.

**T**HE SECOND BIG surprise about Eli Langer is that his paintings are so powerful. After poking around on the phone for a while, I connected with somebody who agreed to show me the three Langer paintings from the Mercer Union that weren't confiscated by police, and which he was storing in his workplace. Here is what I saw. The first canvas is dominated by a red curtain, behind which a wraith-like figure is trying to hide. The curtain, which hangs from the ceiling, is too short to reach the floor. What the viewer sees are two wobbly Auschwitz-like legs sticking out beneath the hem wearing a little girl's party shoes. The painting reminded me of playing peekaboo with children, and how they always think that if they can't see you, then you can't see them. But there is nothing playful about this painting. The predator is moving closer, and the child is quaking in terror. There is real horror here and real danger. Of all Langer's work, this is the painting I would most like to own.

Langer grew up in Toronto, the middle child of an affluent Jewish family. His father is an orthopedic surgeon and an amateur Holocaust historian. His mother went back to school when Eli's younger sister was 5, earned a master's degree in social work and is now a feminist family therapist in private practice. It was not uncommon, Eli says, to hear about compound fractures and amputations at the Langer dinner table and then to switch to the living room to catch the latest documentary on Nazi atrocities.

By his own admission, Eli was a bad/mad boy as a teenager. He went to at least five high schools and was expelled from most of them, did drugs and acted out—the whole nightmare. As an artist he is "formally and technically" self-taught. His education amounts to a Grade 12 diploma, some life drawing classes and a course at the Toronto School of Art where he studied theory with Andy Fabo. For him, drawing is as natural as walking—something he has done almost unconsciously for as long as he can remember. Because he didn't go

to "proper" art school, he has no network, few references and chasms in his context. Ask him about Paul Peel's paintings of naked little boys warming themselves by the fire or William Blake's allegorical drawings, and he shrugs. Tell him a story or an experience, though, and you can see him ingest it like a nicotine addict dragging on a cigarette. Being self-taught can have its limitations, but it can also foster an original



Langer won't defend his work: "If someone is turned on by my images, it says more about them than me"

and idiosyncratic view of the world. Think of Doris Lessing, or Bob Fulford for that matter.

Another of his paintings shows a darkened bedroom. On the left is an open window, on the right a rumped, narrow bed. In the foreground, between the bed and the window, lies a beaten-up teddy bear. In the background, a shadowy adult figure is rifling through bureau drawers. A small child, barely discernible, was sleeping in the bed before the intruder stole in through the window. Whether that child is safe, or even alive, is uncertain.

Langer told me later that he has a recurring dream of himself as a burglar, going "into my psyche with my bag on like the burglar does in the painting. I'm revisiting my memories, places that have been closed up to me." But why a burglar? "Because a burglar goes in secretly, a burglar sneaks in, a burglar doesn't go in and turn on the lights, a burglar is intruding in the place where he's not supposed to be—a forbidden place." Langer believes that there are places in our psyches that are hidden or locked up—"rooms where we have never wanted to go back because it is too horrible." For him, the only safe way to return is in stealth, under cover of darkness.

The last painting (shown on the previous page) is set in a squat in the aftermath of action or violation. The adult man in the foreground seems exhausted, perhaps from having had sex with the adolescent boy in the opposite corner. It is uncertain whether the boy is setting a fire for warmth or to ignite a conflagra-

tion that will eventually engulf even the painting hanging high above his head on the wall. There is no warmth, no connection between the figures. Our assumption is that the younger figure is a street kid who has just scored by selling his body to the older figure. He seems more robust, less vulnerable, more in charge than the adult. This painting is ambiguous about who is the victim, or even whether there is a victim.

These dark and shadowy pictures pack an enormous narrative punch. They play on our memories and our fears and our obsessions. They are sinister, even harrowing. And these are the paintings the police left behind. After another set of phone calls, I arranged for someone to show me a stack of Langer drawings of roughly sketched figures. They had none of the wallop of the Mercer Union paintings. Yes, many of them depicted children who were engaged in sex, but they seemed more like anatomical studies than finished works. And the sexual acts, if one could call them that, were more curious and exploratory than knowing and self-conscious. One drawing that I remember was of a small boy absentmindedly gazing into an open refrigerator with one hand inside the front of his pants. It is a contemplative pose. Not my idea of a turn-on, but then I'm not a member of the Morality Bureau.

This person reluctantly showed me slides of the five seized paintings. We used a pocket-sized projector held in front of a high-wattage light bulb. These were not ideal viewing conditions. It was only later that I realized with a thud that we had probably broken the law. Given zero magnification and absurd lighting, it was almost impossible to appreciate the artist's technique or style. The effort simply to read the paintings, to see what was in them, was too great.

One painting showed a little girl shamelessly delighting in her own bowel movement. Another showed an older man with a small child. Both are naked. The child is standing in front of the man, who may well be her grandfather. He is holding her hands and looking into her face, which is bent backward and gazing upward. It looks as though the man is dancing with the child or helping her to execute a back flip. They are totally absorbed in each other. The mood is trusting and intimate. The old man and the child appear in another, much less benign picture in which the naked man is supine under a blanket, and the nude child is crouching beside him, looking down at him while drops of saliva dribble from her mouth toward his upturned

Art continued.

face. She is holding the edge of the blanket, but whether she is covering or uncovering him is open to question. The fact that they are naked and in what looks like a bed, disturbed me. Would it be different, I wondered, if the older figure were a woman?

Langer uses a palette that concentrates on lush reds and murky blacks, or brownish-greys and whites. The background is often shadowy and cavernous with one figure highlighted in the foreground. The contrast of the colours, the representational figures and the abstract settings summon images of infernos and spiritual references to the poetry of William Blake. The subject matter is sexually explicit, but not prurient. The focus always seems to be on the child and his or her response or perspective.

The most harrowing picture is of a child lying face down on a bed. All we see is his/her face, which is contorted with fear and pain. There is a hump draped in bed clothes on top of his/her body, and sticking out from beneath the covers at the other end of the bed is an adult foot and ankle. In the foreground, between the bed and the viewer, is a nonrepresentational figure standing on its head. This wraith is like the figure cowering behind the red curtain. Anybody with the most cursory knowledge of child abuse would recognize this as a textbook illustration of dissociation.

Mostly Langer's paintings are of precise and separate moments that force the viewer into the scene as though he or she is a passerby who stumbles across a shocking incident. Looking at them is like watching an accident about to happen. You are caught in that excruciating-

ly attenuated moment of anticipating the crash and fearing the impact. Except that what is about to happen has nothing to do with chance. It is deliberate, cruel and sadistic. The viewer brings a knowing, adult sensibility to the scene and yet is impotent to prevent a child from being abused. No wonder Kate Taylor was upset. Too bad she was too immature, or too frightened, to cope with it.

The work that I found repugnant, as well as haunting, was the oft-described scene in which a sexually erect man lies naked on a bed while a small girl sits on his shoulders and stares down at her own swollen genitals. In the background there is an intruder looking in the window. At first I thought this painting, which is rendered in creams and charcoal greys, was a study in narcissism: the man looks like he's gazing off in the distance, so absorbed in his own arousal that he is oblivious to the child. But Langer says the man's head is turned to lick the child's foot. That detail changes the meaning of the picture. Now it appears that the child is the seducer and the adult is the supplicant, an idea that I can accept intellectually, but which I find emotionally abhorrent.

**W**HAT IS REALLY wrong with these drawings and paintings is that they tell stories we don't want to hear: that children are sexual beings, that they are most at risk from those they love and trust, and that we are almost always powerless to protect them from predators. But in their zeal to protect children, the lawmakers inadvertently created a new victim: Eli Langer. Their discomfiture was made obvious late in February when the police dropped the charges against the artist

and put the paintings on trial instead. Langer won't go to jail, but his confiscated paintings are in serious danger of being burned. "He can't produce anything he wants," Detective John Ferguson of the Metro Police Morality Bureau explained to *The Toronto Star* after the charges were dropped against Langer. Nobody seemed to notice that this was happening on the eve of Freedom to Read week.

Freedom of expression has two prongs: the artist has the right to paint; the audience has a corresponding right to see. By putting the paintings on trial, the police have shifted the focus from denying one artist the freedom to create and exhibit his imagined world to a much broader form of censorship that denies us the right to see those images and make up our own minds about them. Our right to see, and then perhaps to disagree, is as vital as Eli Langer's right to paint pictures. You can't separate them.

Langer refuses to defend or interpret his paintings on the grounds that "there is a context for every different person who views the work. If somebody is turned on by my images, then it is about themselves," he contends. He is profoundly "disturbed" about the upcoming trial (scheduled to begin in September), but he has started to paint again. "I'm just concentrating on brush strokes," he told me, "trying to get on form again." He is still using the same palette and exploring the same ideas, but there is a wariness now because he knows that whatever he paints will be seen in terms of his infamy as a child pornographer. Eli Langer has been labelled. No matter what happens in the trial, he may well have had his first and last exhibition in a commercial art gallery. ■

12 THE TORONTO STAR Saturday, March 5, 1984

## Why should judges be judging art for us?

One of the more curious aspects of the Eli Langer affair is that so many of those involved never saw the paintings that got the 26-year-old artist charged under Canada's new kiddie porn laws.

These charges have been dropped but the offending canvases and drawings are still being held by Metro Police. They will be the subject of a forfeiture hearing March 28. If the works are found to be pornographic, they will be destroyed.

The decision will be made by an Ontario district court judge. He or she will rule on whether or not the rest of us are allowed to see Langer's paintings. If the judge decides the works are pornographic, we will never get that chance.

In case you're just back from Photo, the exhibition that caused the trouble was on display last December at Mercer Union Gallery on Adelaide St. W. It included several dozen crude sketches and a series of large-format paintings, some of which depicted young children in various sexual acts with adults and other children.

It was not a happy show. When I saw it, I felt a mixture of horror and fascination. The most of the work was overwhelmingly sad; there was nothing titillating about it.

This was not a celebration of incest or pedophilia. Neither was it an outright condemnation. There was no artist's statement outlining the artist's position; the paintings and drawings were simply hanging on the walls.

Normally, one would be grateful for such reticence. But given the deeply sensitive nature of Langer's subject matter, a few words might have been in order. And given who'll be passing final judgment on the stuff, a few words would have been especially appropriate. Experience tells us that police officers and judges make even worse art critics than the real art critics.

The fact remains, however, that Langer's failure to state a position does not make him a pornographer.

Indeed, as it now stands, the law has told us that even if Langer's work is pornographic, he isn't a pornographer. After all, though the artwork is still on trial, charges against the artist have been dropped.

Is it any wonder faith in the judicial system is eroding so quickly? Whatever happened to the notion of individual responsibility? If

### Art

CHRISTOPHER HUME

Langer is a purveyor of child pornography, then surely he should be punished to the full extent of the law.

But the Crown prosecutors and Metro Police don't want to turn Langer into a martyr. They want the case to be judged strictly on the basis of the work itself. Does it or does it not fit the criteria as laid out in Bill C-128, the child porn law that was rushed through Parliament last summer?

The act makes it illegal to make, own or sell any depiction of sex between individuals who appears to be under 18. The bill also provides for exemption on the basis of artistic, educational or medical significance.

And so once again we find ourselves on the horns of the same old dilemma: What is art?

The problem now is that only judges and police get to decide. How if you find that offensive and dare we add, profoundly anti-democratic.

In their rush to save us from ourselves, Canadian politicians made it clear they don't think much of the individual's ability to deal with difficult material. A certain amount of freedom of self-expression is good, but too much isn't.

That's what it amounts to. Bill C-128 assumes that society is harmed by the mere display of such imagery. It suggests that people cannot handle paintings as strong as Langer's, that we will be hurt by the fact of their existence.

How? By inspiring the people who see them to similar actions? By making the sexual abuse of children conceivable?

One thing that has been overlooked in the shouting is that Langer's paintings were not crude. Far from it. He was not criticizing children, depicting sexual acts involving kids and adults. The very restricted way he used color — painting pictures in grey and red — absolutely precluded sensuality.

And, of course, they were paintings, not videos, not photographs. Not film. They were acts of the imagination in which time, real, child, played any part.

The distinction between the real and art is one the law finds difficult to make. But when the law is increasingly hysterical, another reason why it's so important the rest of us not be

A24

## THE GLOBE AND MAIL

CANADA'S NATIONAL NEWSPAPER

The subject who is truly loyal to the Chief Magistrate will neither advise nor submit to arbitrary measures. JUNIUS

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Friday, March 11, 1984

## It's still a bad law

THE breakup of a child pornography ring in London, Ont., has left supporters of Ottawa's new child porn law feeling vindicated. The London case in which pornographers paid young men and boys to perform sex acts in front of a video camera, is a clear example of the kind of crime the law was meant to address. If the dangers of the law were illustrated by the case of Eli Langer, the Toronto artist who had his paintings seized by police in December, this surely, illustrated its necessity. Or did it?

Some of the most serious charges against the men arrested in London do not concern pornography, per se, but rather the illegal acts performed during the making of it. Apart from producing obscene material and possessing child pornography, the two men arrested in that case faced a number of sex charges ranging from sexual touching to anal intercourse. These charges have always been available to police in cases where youths were exploited to make pornography. The Criminal Code contains at least five sections on the sexual abuse of children, including sexual interference (Section 151), invitation to sexual touching (Section 152), sexual exploitation (Section 153), permitting sexual activity in a household (Section 171) and corrupting children (Section 172). These sections existed long before Parliament passed the child pornography bill last June.

The Criminal Code before Bill C-128 also gave police considerable power to deal with child pornography itself. Section 163 of the Code enables authorities to prosecute any one who "makes, publishes, distributes, circulates, or has in

his possession for the purpose of publication, distribution or circulation any obscene, written, material, picture, model, photograph record or other thing whatever." Obscenity, in the Code, is defined as the "undue exploitation of sex"—a provision that has always been strong enough to allow for the prosecution of explicit child pornography of the kind uncovered in London.

The only "loophole" in the Code before C-128 was the lack of any sanction against those who possessed personal collections of child pornography. That is remedied in the new law, which makes "every person who possesses any child pornography" guilty of an offence. Police say this new provision helps them break child pornography networks because the users of the child porn lead them to the producers. If this is the case, the government could have filled the gap with a simple amendment to the Code.

Instead, in what was clearly a pre-election gimmick, the Conservative government brought in a hastily conceived bill that poses a serious threat to freedom of expression. The bill makes it a crime to make, print, publish or possess any depiction of "explicit sexual activity" by a person who is "or is depicted as being" under the age of 18—a provision that could lead to the prosecution of a wide spectrum of fictional material, from movies about teenage lust like the Summer of '42 to serious dramatic literature. The boys of St. Vincent.

Vague, over broad, politically motivated and, for the most part, redundant, Bill C-128 is the very definition of bad law. The events in London, however regrettable, do not change that.

# MIX IS IN

## the unpublishability of Eli Langer

by Margaret Christakos

November 1995

In June of this year I solicited an article for *MIX's* premiere issue from ELI LANGER, bad boy of the art community, new anti-censorship icon, young painter and media star for a few months during which his paintings and drawings were tried for obscenity under the youth pornography law. I was interested not in his celebrity but in his voice, how he might trace his experience of the forfeiture hearing and the impact of such an intervention on his creativity. What did it mean for a young artist to be curated into the highly specialized collection of Project P? As a public sacrifice at the altar of the all-pervasive right-wing fundamentalist backlash, Langer had to have been damaged, and also highly sensitized to the intricacies of state repression. I had read nothing but *descriptions*, and as a writer and editor myself was keenly interested in the transgressive utterance from the mouth of the maker. Artists who risk the collapse of categories, who push at the edges of genre, who apply passion to the inquiry of ambivalences, are of interest to me.

Langer's visual vocabulary did this, I thought, when I saw the work on display in the courthouse. These images were unnerving, sexy, odd, beautifully drafted, dreamlike. They animated the ideas of *children* and of *sexuality*, and tickled one's imagination of these two terms in relationship. They seemed to be very much about Langer's male gaze, identity and positioning. They did not float disconnected either from the artist's self-articulation or the viewer's self-conscious appropriation of them into his or her own memories, fantasies and interrogative processes.

Like anyone else who saw the works in the courtroom, however, I was startled by the complete vulnerability of contemporary cultural producers to charges of unlawfulness and obscenity. Langer was being shamed, that was clear. Artists were meant to internalize consequentiality. As a writer, I found the scenario of actual works of art on trial throttling. The artist and "art" were exonerated in the intense forfeiture hearing that heard many "experts from the artistic community" come forward and educate the court about the value and workings of art. Essentially, Eurocentric traditions and opinions about what art is and why it is different from more "prurient" forms of expression were reinforced as authoritative. Whatever one's political response to the racialized discourse of Art as it stands in Canada, it was a cause for anti-censorship celebration that Langer's paintings and drawings were returned to the artist and that the court's power to have them destroyed was, at least in this battle, successfully rebutted.

Langer accepted the *MIX* writing proposal, and a few weeks later delivered a mass of scribbled notes and a general vision of a highly personal article, one that included observations on the inanity of certain proceedings, vignettes from his experience of external events and several dream sequences that occurred at

different points in his ordeal. As a reader I enjoy the logic of the non-linear and allusive, and respond with curiosity to dramatic imagery. Most of all I applaud the bravery of the subjective: Langer had brought a gift made up of many adjacent small boxes, a string of paragraphs that confronted me like separate but related exhibits (cf. a *trial*). Each was a word-picture, rendered with the intensity and flare of his visual creations. This article was a work of art that Langer could make in words, instead of paintings that may have been too difficult to produce in the trial's waning but still long shadow. Over the next month we worked together to fulfill the piece's promise.

The dream sequences referred again to the dangerous terms: *children* and *sexuality*. If I do anything here, if I do anything but quote them, I am giving you again only *descriptions*. If I tell you he wrote about the judge, or of a burning church, or of fury, what have you got but descriptions? This is not the piece, and perhaps you have not seen the drawn and painted images that were confiscated to begin with. The first order of importance, I think, is to ask how it is that the receiver of stories arrives at an imagination of images that are merely described, and by whom, and for what purpose... If one's personal interpretations of *versions* of events are multitudinous, then it is only fair to assume that the possible interpretations of an original telling, the source work, are also multitudinous. No image provides a single reading, even to a single reader. And every reading might be construed most meaningfully as a reading of the *reader*. Or at least that's a premise I follow.

Another premise that makes sense to me: that, although writing is an act of self-conscious and critical construction, a dream *happens* to the dreamer, and an attempt to render authentically the dream more than likely respects "truth" more than contrivance. Perhaps notably unlike a fantasy that is called forth by the daydreamer, or a story that is prepared by the writer for an audience's reactions, the telling of dreams is an exercise in suspended morality. But if necessary: the four dream sequences in Langer's finished article might be diagnosed as images expressing the demonization of the self by internal and external censorious forces, in three of these four cases told with somewhat sexual language, spoken in the two dangerous terms posited by the trial.

Because of its ambiguity and operation of *the two dangerous terms*, Langer's article — on the eve of publication in our premiere issue — faced intense scrutiny when reviewed by the full range of editors and staff at *MIX*. For those whose warning alarms went off at the imagery, anxiety rose in what seemed like a disarming choice: be party to censorship or be party to something that could be construed by some contingents of a highly heterogeneous readership as pornography. Forget that the ironic byproducts of mimesis have been the basis of most pop-inspired artmaking of the last thirty years. Because of the Langer hearing, because of the artist's infamy, and because of fears about specific content of the article, we were obliged to inform our board of potential legal liability, and of the decision by one of our editors to leave to pursue her own

# INTERVIEW

projects with the insight that the terrain represented by the article was not one she could walk over or in comfortably.

In order to understand our vulnerability, given the ill-defined and umbrella-like clout of the extremely dangerous child pornography law, we consulted a total of four legal opinions and one psychoanalytic opinion, to contextualize the dream representations. We investigated the authoritative discourses much like the Langer defense built its case around Eurocentric ideals about freedom of speech and immunity for artistic expression. To circumvent any legal response to the piece, we were advised to make — in print — the cautionary concession that we viewed it as in no way “advocating or counselling” the sexual abuse of children. This despite the fact that the piece *did not* violate the existing law with regards to written materials, a law which is very conservative indeed. The terrorism that this law can be inaccurately wielded against virtually any image or piece of writing is a chill factor I am now certain carries heavy impact for anyone even thinking about making and/or publishing art and ideas about sexuality. This approach — the gathering of arguments to support the transgressive utterance before public exhibition — is what Langer’s defense lawyer during the hearing, Frank Addario, at the Ontario Association of Art Galleries’ (OAGG) recent “Censorship and the Arts” forum termed responsible “front-end loading” for cultural organizations. (An astounding anecdote offered in the question period revealed that a recent AIDS poster show at the Woodstock Art Gallery was exhibited with white papers hung over the posters deemed to contain “controversial” homoerotic imagery; this strategy — wherein viewers of the work would recognize something about the voyeuristic relations of contemporary life, once they unveiled the works in question — was devised after curatorial consultation with local cops, the school board trustee, and lawyers confirmed that children should be protected from such images. The curator involved seemed to think this “community outreach” was a positive compromise, a step in the right direction.)

By the time Langer’s article reached our board the issue had ballooned. Maybe fear alone does that; maybe it was the juicy fruit of *MIX*’s new and incomplete mandate, or a difference of political priorities. I find it important to be mindful of how women of colour involved with the magazine offered a different context altogether in which the Langer article raised issues of white male privilege and the unacceptability of Langer’s subject matter to elements in their communities. In this case, supporting going public with material that might have incurred conservative legal and social outcry might have endangered their grassroots broad-based politics of change that ranked anti-censorship around this particular type of imagery a luxury.

After winning the Langer case, Addario went on to tackle the problematic legislative foundations of the youth porn law by representing an appeal to the Supreme Court this fall. This appeal, reported in the recent *FUSE Magazine* to have been brought by Langer, was actually an independent initiative of publically unnamed Toronto activists. In early September, as the

*MIX* board and staff still wrestled with the implications of publishing Langer’s article, someone connected with the appeal called me with a request to preview the article and run it by Addario to see how it might or might not affect the overall public and community perception of Langer. *Fundraising*, don’t you know. The caller suggested that a good compromise might be to hold the piece over until *MIX*’s second issue. In the end, the application for appeal was denied, as are the majority of cases filed, ironically “clearing the way” (like a snowplow...) for Langer’s transgressive utterance. It is an event as “innocuous” as this that demonstrates the ease with which anti-censorship strategy, in my opinion, can shoot itself in the foot.

For is it really grounded to imagine that the laws will be changed for the purposes of an increasingly *inquiring* culture, a society where artistic vision is valued for its staunch explorations of the new, the hard, the murky, the taboo? Is there some utopia coming that I don’t know about? Is not the strategy of circulating and proliferating the intelligently problematic and transgressive image the train we should be boarding in greater number, not leaping from headlong onto the steely and incisive tracks of the state?

I view writing as a form of cultural activism, and Langer’s piece, although not by someone who describes himself as a writer, was alive and sentient, punchy and raw. The convergence of experiential zones — the imaginary and the “real” — called up interesting questions about the competing authorities of fictional conventions, and differences between a documentary text which gains its power from the authenticity of its narrator, and an ironic highly constructed text which mobilizes the personal and autobiographical to signify the arbitrariness of assumptions about any “self’s” reliability. Langer’s piece, in my perception, was doing some of both: being true to his experience, and through sensitive juxtapositions juggling readers’ own expectations and fears about being dubbed a sex offender on the basis of one’s own quite classic and perhaps even clichéd imaginary productions.

And here I see I am in the noxious paradox of reviewing and describing a work that will not be seen. This is not the piece; it could not be published. After the first wave of explosive difference, a decision was made, without consensus, to hold the piece for *MIX*’s next issue on the basis of utter burnout, fractious relations and another thing: the Bernardo verdict, which foregrounded “victims’ rights” and “zero-tolerance” ideology to a frightening degree. The making and viewing of video imagery as the medium both of the Bernardo-Homolka crimes and of their indictment cast a cold pall on all artists working in the conflictual terrain of sexual representation. Any instance of the sexualization of children, anywhere, in September and October of this year would be yanked so far out of context as to snap back in the face of the “transgressor,” and all of his or her “accomplices.” The law itself is the hyper-elastic medium that criminalizes all those involved in the making, publishing, distribution, circulation of kiddie porn; but what this stuff is or is meant to be in order to be confiscatable, dispensable, is unclear.

the present ironies of mass culture taunt: real underagers are shown fucking in the movie *Kids*; on Toronto's Winter Garden stage, *Tommy* shows a scene where an actual child actor is engaged in the act of pretending to be molested; even the book *Courage to Heal* explains how incest survivors will have creative fantasies about children as key and persistent phrases of their own adult sexual language; on talk shows at any hour of the afternoon one can hear pornographic language and self-congratulatory/flaying disclosures of humanity's basest side in full swing; and we all did have a sexual self before the age of fourteen. (As long as we're sorry about it.) If all of these dimensions which animate the dangerous terms *children* and *sexuality*, representation and taboo, fantasy and desire, self and other are circulating for our generation perhaps more than ever before us, why are there not more contemporary artists openly exploring this terrain in their work? And what, too, has race and cultural specificity got to do with it all? Would the artistic defense used for Langer's works fly if applied to art dealing with similarly taboo subject matter but being represented within very non-Western aesthetic codes? In the courtroom I remember watching the wheels of the State spin smoothly around, and hearing the multiple authorizing discourses of law and psychology and Western art philosophy pat each other on the back; but none of them really works in service of a reorganized culture that loves art, sex and/or children: that, in short, respects and honours the complexity of the human condition, imagination, and self.

Artists staking their careers on busting artists? Artists fretting about being busted before showing their work to a colleague in the studio down the hall? Art publishers seeking pre-publication legal opinions in case an irate reader writes a letter to the arts councils demanding defunding, or criminal charges get filed? Board members of non-profit organizations resigning because the prospect of a court challenge is just too time-consuming? Front-end loading? In addition to these substantial symptoms of the chill, one of the sorriest outcomes of the Langer hearing is the personalization and pathologization of Langer and his work, and therefore the missed opportunity among a broad range of artists to take the freedom of expression issue up *artistically* and diversely. To his credit, in closing comments made at the OAG session, Frank Addario offered the following strategy to cultural organizers seeking legal opinions on "contentious" material: "Ask me not if you can do it, ask me how you can do it." By the same token, what collective strategies could be effectively mounted by artists to attend to the complex issue of representing the psyche's deeper dramas while engaging in a self-reflective and inquiring process about the constructedness of sexual taboos? Gender played a substantial role in framing Langer as a closet pedophile; if he had been a male painter, would his images have been so immediately suspect? Or would Kate Taylor and the Project P quacks have read into them a strong dose of victimization and collective female sorrow at perceived "tragic" memories of exploitation?

In fact, Langer's depiction of children in sexual situations was generated as art only when constructed as a tract on the lamblability of children enduring abuse. What about the possibility that Langer was drawing on an autobiographical archive of his inner child's profane and potent imagination? Where is the companion contemporary art that takes up this profound theme? I have not yet heard of any curators or gallery directors or fellow artists, for that matter — calling for the mounting and touring of the Langer exhibition as a direct means of soliciting contrary and multiple interpretations of artworks that

constitute a projective goldmine/ minefield/ field of vision and revision. No resources to my knowledge have been allotted by galleries, civil liberties groups and art supporters in concert to ensure that Langer's confiscated works be documented in an exhibition catalogue. Nor has anyone yet lobbied for the artist to be received, critically, substantively, by the art media and the public; this process, essential to art as cultural transaction, was cut off at the root when the works were seized.

There are many issues and actions that have not yet emerged in the hearing's aftermath because the cultural sector is frightened of conservative backlash and criminalization, and has sought recourse in traditional Euroaesthetic explanations of Langer's paintings and drawings as inherently valuable on their artistic merit. Where, though, is the artistic expression of how it is that fantasy plays a crucial role in our psyches whether or not we are artists; and that the sexual imagination may be a precursor to but is not the same as sexual practice. In an ambiguous image, who decides, and how, if the representation has been made with a sexualizing purpose? What is happening that the most lay notion of projective psychology — the understanding of what is served by a dream, for example — has been so abandoned that the public cannot grasp even its own role in making meaning of any image? How will we as a community remember works that exist only by description? And how are artists participants in the demarcation and fortification of this silenced zone?

We at *MIX* are participants, since the publication of Langer's piece was delayed until a point when the artist himself no longer believed in it. This is not the piece, Eli said to me, for which he could or would go out on a limb now. I interpret this withdrawal as the artist's self-protective and entirely respectable portrait of the "clear fucking effect of this climate." Front-end loaded to death, another piece of art has been buried. Deep winter is setting in, and the snowplow sent by the State to clean the transgressive utterance away will not protect or preserve the art community any more than it will guarantee the safety of *children* and *sexuality* as terms of experience or representation. Evidently, it's time for artists to use our collective weight to do some major front-end loading of our own.

*My thanks to and high regards for Eli, whose publishability — along with that of every other artist and writer — should be proven by critics and curators, not lawyers, cops and judges.*

Margaret Christakos is a Toronto writer and co-editor of *MIX*,

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# What is art and what is pornography? Let the people, not the police, decide

Celebrating pedophilia is a sure-fire way to get noticed.

The guardians of our moral compass will get you in their sights and quickly set the law on you. Just ask any artist and they'll give you an earful about the censor-morons. Now, most of us pornographers know that if you want to sing those praises unfettered by convention, not to mention the constabulary, then you have to be a little cagey about the circumstances. Let me share a trade secret in the interest of freedom of expression: timing and location are everything.

Years ago, I stood before a couple of hundred upright fellow citizens and defended the pleasures of sexual relations with pre-adolescent girls. That I did so uninterruptedly and to applause may shock you; more astonishing still is that I was encouraged to expand on my views.

I confess I was tempted. But I didn't. After all, anyone in the audience had likely recognized my words as the plundered opening page of Vladimir Nabokov's *Lolita* and plagiarism, then as now, never goes over well with the theatre-going public.

Regrettably, my moment of controversy, an audition speech before the assembled heads of Canadian theatre, was at an end. Still, lucky for me the police usually see the theatre as a toothless vice. I escaped prosecution.

All the same, I'd achieved what I'd intended: I'd distinguished myself from the other hopefuls and drawn offers of employment. But was that really what I'd in-

## Other Voices

JOHN BOURGEOIS



tended? In retrospect, perhaps I meant to promote the sordid obsession that finally kills Nabokov's Professor. If it could be proved in a court of law that I circulated obscene material knowingly, then I would be legally responsible for corrupting public morals. Or maybe, youthfully melancholic, I intended the speech as a *cri de coeur* for unattainable beauty. I like to think that was my real intention, but the truth is, I can't be sure.

In our post-Freudian world, intention is widely studied as the prime motivator of creativity. Partly in reaction to this relentless analysis, artists have opposed empiricism and turned to the mystical and supernatural for inspiration.

It is axiomatic that too much scrutiny of motive dooms a work to bloodless failure. D. H. Lawrence, wearied with attempts to categorize his motives, replied: "I am what I am. Not what I think I am."

The artist as conduit to primal forces remains a prevalent explanation for all that is inchoate and shocking. The French surrealists

carried this further and sought total liberation from the conscious world. Andre Breton defined its poetic expression as: "Pure psychic automatism by which it is intended to express, verbally, in writing or by other means, the real process of thought. Thought's dictation, in the absence of all control exercised by the reason and outside all aesthetic and moral preoccupations."

## Pornographic depictions of children should be flagged; even D. H. Lawrence called for some censorship.

Intention in art presents a paradox. Without a forcible design, a project stands little chance of succeeding. And the degree to which a work expresses that inner fuse of wonder is a measure of its authenticity. And yet when beholding a product of the imagination, should we care what the artist's intention was? If it isn't sensed, then no amount of theorizing will satisfy us; just as a geologist's explanation can never match the joy of discovering wind-sculpted stalactites.

Art, like nature, is something which at first we apprehend sensually. Then our reactions are filtered through the complex of beliefs and suspicions that we

recognize as community standards.

If sex is used unduly for its principal effects, then that art is deemed obscene. Legally, the artist's intention is irrelevant. What matters is society's fear that its children will be corrupted by the fetid air of pornography and violence. And pornographic depictions of children, like any quagmire, should be flagged and their dangers recognized.

But in a free society, how should we distinguish between a work of genius like *Lolita* and the foul renderings of a pervert or, more vexing still, the latter's claim of artistic purity?

Individually, we must judge whether pornography is or isn't intended and estimate, however imperfectly, the conception of the work. A critical consensus soon decides whether it deserves our approval or obloquy. True, many works of genius have been ill-served by this herding of opinion and some, I imagine, failed to survive. Yet, as an artist, I'd sooner submit to social opprobrium than the blunted edge of the law.

Reversing opinion is generally easier than restoring the initial inspiration for a work the police may have destroyed. Our interpretation of intention, despite its ultimate irrelevance to appreciation, remains the least harmful form of censorship in a democracy. Keep the law out of it. Let the people decide.

John Bourgeois is the artistic director of Skylight Theatre in North York.

**FOR IMMEDIATE RELEASE**

**DECEMBER 21, 1993**

**TORONTO:** Members of the local arts and free speech communities will address the press in response to the recent raid on Toronto art gallery Mercer Union by police, the seizure of 35 paintings and drawings by artist Eli Langer and the resulting charges laid against Langer today.

**PLACE:** METRO HALL  
55 JOHN STREET  
ROOM 313

**TIME:** 2:00 pm, WEDNESDAY, DECEMBER 22, 1993

**PARTICIPANTS:**

**MAX ALLEN:** CBC "Ideas" producer and long-time free speech activist.

**JUNE CALLWOOD** columnist, author, social activist and a founder of Casey House, hospice for AIDS care in Toronto

**ELAINE CAROL** feminist artist, writer and anti-censorship activist. She has travelled throughout North America interviewing censored artists for her performance "Gossip". Carol has a history as a front-line worker in womens' shelters and sexual abuse treatment centres.

**ANDY FABO** internationally exhibited visual and video artist, writer and AIDS activist.

**YDESSA HENDELES**, arts patron, director of the Ydessa Foundation in Toronto and member of the Board of Directors of the Toronto Art Therapy Institute.

**ELI LANGER** painter and visual artist.

**LISA STEELE**, artist, instructor at the Ontario College of Art, and co-recipient of the 1993 Toronto Arts Award for media arts. Steele has been active in the anti-censorship movement since 1978.

**BRUCE WALSH**, spokesperson for free speech group CENSORSTOP.

For further information contact **BRUCE WALSH** 691-9351.

ELI LANGER PRESS CONFERENCE 22 Dec 93 1400 Metro Hall rm 313

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Max Allen (416) 205-6017

The disease of the 90's is a kind of mania where masses of people have lost sight of the difference between imaginary images and the world of real people, real causes and real effects.

I'm a radio and television producer at the CBC. Twenty-three years ago, in another job, I was prosecuted twice for obscenity. At issue was the showing of Russ Meyer's "Vixen", a risque film with no visible sex, no nudity below the waist, and no four-letter words. The movie was said to offend community standards.

On July 31st of this year, a radical new child pornography law came into effect. The term "child" is misleading. What this law does is outlaw any kind of sexual picture involving anybody under 18, or who looks like they might be under 18. It's now illegal merely to have such a picture. It's also illegal to have any kind of writing, even your own writing, that describes sex under 18.

There have been many arrests. There are now 13 men that I know of in Ontario, Manitoba and Quebec who are in jail. At least 18 others, including Eli Langer, have been charged but not jailed. Yet. One of the incarcerated men in Toronto is 14 years old; one is 15. Their crime was making a video of themselves having sex. The sex itself, of course, was perfectly legal. Filming it -- making it into "art" -- was the crime.

Here's a two-minute history of how the new law was passed this summer and how it's been used.

In February of last year -- following the arguments put forward by LEAF, the Women's Legal Education and Action Fund -- the Supreme Court declared unanimously that the test for obscenity should depend on "harm" -- how much harm would be caused (to women) by a particular publication (video, book, painting, etc.). Immediately afterward, justice minister Kim Campbell said this opened the door to new child pornography legislation (though child pornography has always been illegal anyway). In June, parliament passed the new law, unanimously. Senator Richard Stanbury said that "nobody had the nerve to stand up to the pressures that were against them" to support the bill.

Two police officers (Bob Matthews, head of Project P in Toronto, and Noreen Wolfe from the Vancouver police) testified in favour of the new law, saying it was designed to protect children. Arguing against the new law because it was unconstitutional and a radical departure from established jurisprudence were the Writers Guild of Canada, the Canadian Civil Liberties Association, the Canadian Film and Television Production Association, the ACTRA Performers Guild, the Canadian Broadcasting Corporation, the National Film Board, and the Canadian Bar Association.

Committee hearings on the bill were limited to 4 hours. After the witnesses were dismissed, the committee took a ten minute break and further broadened the law by banning written material in addition to images. The new law makes it illegal to possess material, even material you've made or written yourself, that depicts people under 18 involved in any sexual activity or simply "exposing" themselves.

On August 31st, my friend John Young's apartment was raided in Toronto. I know John because I'm writing a book about video pornography, and John has (or had) a huge collection of videos of all kinds, from The Sound of Music to Debbie Loves Dallas. John Young is now in jail awaiting a pretrial hearing in January.

You probably know the story of the two Toronto kids, 14 and 15, who are incarcerated for videotaping themselves -- that story has been in the papers. [This is an example of the manufacture of crime by the police. Crime, in this case, has been created by police officers through pressuring, encouraging--in fact forcing--teenagers to accuse each other and adult men of sexual assault, which in turn leads to more and more arrests. In the Langer case we've seen how police intrusion can cause fright and uncertainty among established art galleries, artists, and computer system operators. So imagine the effect of police intrusion and threats of prosecution on 'marginal' street kids and their friends.]

In London (Ontario) last month, police arrested two men and seized some homemade videos which apparently show teenagers having sex. In an effort to identify the young (male) participants, London police have been showing still photographs of them to social workers and street kids, and who knows who else. Seven men are now in jail; four of them are 20 and 21 years old. I cannot find out how many kids under 16 are being held.

Computer bulletin boards have been shut down by the police in Toronto and Winnipeg, and teenagers arrested. I bet some of the contested pictures are "art".

When the law was passed, the justice minister (who by then was Pierre Blais) said it wouldn't bother artists -- after all, there was an artistic loophole which could be raised in court, during the trial. That's when you could argue with the police about what art is. In October Noreen Wolfe of the Vancouver police told me, "Of course we're not going to walk into art galleries, pull pictures off the wall, and things like that."

Fourteen is the age of consent, when it's legal to have sex. But if you have a picture of anybody under eighteen having sex (even--or especially--enthusiastic, consensual sex), you go to jail. It's OK to do the sex, but if you represent it, or describe it in writing, you're in trouble. This is just one of the reasons that the CBC, the NFB and the Canadian Bar Association say the new law, under which Eli Langer has been charged, is unconstitutional.

M E D I A     C O N F E R E N C E

E L I   L A N G E R   B U S T

ELAINE CAROL

DECEMBER 22, 1993

When Globe and Mail writer Kate Taylor published her December 14th review of Eli Langer's painting and drawings at Mercer Union, she moved beyond her role as art critic to one of kangaroo court judge and jury. In labelling the work "illegal" and "horrible", she was setting standards for a community she obviously knows little about. In sending a flare up to law enforcers, christian fundamentalists and conservative anti-porn feminists, she created an atmosphere of panic and paranoia.

When Detective Terry Wark and other members of Metro Toronto's so-called morality bureau marched fascistically into Mercer Union gallery on December 17th to seize 5 paintings and 35 drawings, they moved beyond their role of crime fighters to the most cynical of censorious, under-qualified art critics. They cynically used a new law that defines child pornography to charge an artist who explores and condemns the lineage of incest and men's violence against children in bold black and red strokes. Is censorship of courageous art that breaks the silence about child abuse what the Morality Squad think of as "the protection of children"?

Canadian anti-censorship activists knew that like the Butler decision, the new child pornography legislation would be used against artists, lesbians and gays, and sex workers. A wave of hysteria and chill has crept over this country and the myth of the mega-million dollar kiddie porn industry prevails.

The long arm of the law saw this as an opportunity to quell the function of the artist in society which is to observe, examine and expose hypocrisy while employing her/his experience, a sense of aesthetics in their medium of choice and current cultural and political discourse.

Mistakenly, in her review Kate Taylor sees the children represented in the work as "willing participants" in sex. In their ignorance, this is the likely reading the cops have come up with. If these critical censors or censorious critics knew anything about child sexual abuse, they would know about the cycle of fear, threats, physical abuse and lies abusers exploit in order to control their victims. They would know about disassociation and how often, it is only during the act of sexual abuse that many children receive attention from anyone.

Clearly, Langer's beautiful paintings and drawings bravely explore traditions of patriarchal abuse, the handing down of sexual terrorism from grandfather to grand-son and the paralysing horror

experienced by many children who suffer these nightmarish realities. This work is indeed art owing not only to Langer's great technique but to his willingness to reveal the prolonged, damaging effects of the power of sexual violence on survivors. Langer's work demonstrates that silence is complicity.

Let us keep this important and haunting work in its context. A viewer cannot take three-quarters of the work in this exhibition and hold it up as an example of obscenity, however that may be defined. Indeed, there are depictions of adults engaged in sexual activity with children and children's sexual play with other children. There are also two startling drawings of small children attempting suicide. One boy holds a rifle to his head and another stands on a chair, a noose around his neck.

As a young Jewish artist whose father is a Holocaust historian, Langer makes reference in his drawings to the generation of Jews who survived Hitler's Final Solution, as well as the current rise of global fascism.

The last painting Langer made before the Mercer opening is the image that has been the most enduring for me. Surprisingly, this individual work does not represent abuse, however for me it consolidates all the concerns raised in the show. In the dreamlike scene a tall, circular curtain is suspended from the ceiling in a dark room. The curtain doesn't quite reach the floor. The viewer

can see the legs and feet of a little girl. In a futile endeavour, she attempts to hide; her thin legs and white baby-doll shoes betraying her. Like children survivors of sexual abuse, she is isolated, vulnerable and afraid. She cannot hide from the abuse, like many children who live with incest, ritual abuse and other forms of violence coming from those who are supposed to love and protect them. Langer is telling the viewer that society can no longer hide from the reality of adult violence against children and the results of that legacy of brutality.

Langer's work reminds me of the work of such artists as Tasse Geldart and Sue Williams, feminist artists who dared to confront the viewer with explicit and disturbing images of men's violence against women and girls. Exploring memory, violence, pain, terror, survival, sexuality and healing, this is not the Morality Squad's fantasy of kiddie porn. This is art.