

ON GUARD  
A CRITIQUE OF PROJECT GUARDIAN

HALO

the Homophile Association of London Ontario

with CLGRO

the Coalition for Lesbian and Gay Rights in Ontario

September 1996

*Quis custodiet ipsos custodes?*  
Who will guard against the guardians themselves?

Juvenal, *Satires*, vi, 347 (c. 116 AD)



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**PREFACE: WHO WE ARE**

Here in London, we have worked hard over many years and against great obstacles to build a community for lesbian, gay, and bisexual people. We care deeply for our community, which, even today, faces many injustices. We would not be risking the additional jeopardy involved for us in this challenge, if it were not for the seriousness of the problems raised by the operations of Project Guardian, a police investigation into youth and child pornography and sexual exploitation.

This challenge to Project Guardian is initiated by leaders in London's gay, lesbian and bisexual community, and our motivation in this deserves careful consideration. We are acutely aware how sensitive these issues are. We did not take up this challenge lightly. Some members of our community, even though they are sympathetic to our concerns, have nonetheless urged us to let the challenge go, because it seems so emotionally loaded that we could not possibly gain anything.

Many more have urged us to take action. Several other leaders in the community have given their support. The Coalition for Lesbian and Gay Rights in Ontario has supported us. The 1995 Annual General Meeting of HALO endorsed our work.

Richard Hudler and Clarence Crossman have been the primary spokespeople. Mr. Hudler has been President of the Homophile Association of London Ontario (HALO) for 14 years. Clarence Crossman has been a member of HALO's Social Services Committee for 13 years. Besides years of experience in community development, both have professional training and experience in counselling. In order to help facilitate discussion, Betty Anne Thomas, Executive Director of the AIDS Committee of London, was a participant in the dialogue group that met three times with the London police force.

We hope this document will provide the basis for analysis of and discussion about our own position, as leaders in London's gay, lesbian and bisexual community. We have been endorsed by leaders and organizations in Toronto, but this brief does not necessarily represent their views.

By the same token, we do not necessarily embrace all of the diverse views and perspectives expressed by others who may be critical of Project Guardian.

Similarly, we are not responsible for media portrayal of Project Guardian. We have certainly attempted to convey through the media that there is a profoundly different perspective on Project Guardian than the one presented to the media by the police. But how the media chooses to present their stories is beyond our control. Analytical coverage in *The Globe and Mail*, CBC Radio's *Ideas, Xtra!* (Toronto's gay, lesbian and bisexual community newspaper), and *Scene Magazine* have been supportive of our position, but we do not necessarily agree with every aspect of those analyses.

We believe that the gains that our community has made over the past many years have happened at least in part because of the integrity with which we have carried out our advocacy role. We ask readers of this document to consider the concerns that we present in the light of our sincerity and insights.

<b>SUMMARY</b>
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Project Guardian, an investigation of youth and child sexual exploitation in London and Southern Ontario, was brought to a close by the London police force near the end of 1995. However, activities related to the investigation continue. Men who have not pleaded guilty are now coming to trial. It is our understanding that the London police force is preparing a video and companion materials to instruct other police forces on how to conduct similar investigations. An evaluation of the investigation is warranted.

This brief outlines some of the concerns that leaders and members of London's gay, lesbian, and bisexual community have about Project Guardian. Our critique is often simplistically reduced in the media and elsewhere to a complaint that the police are picking on the gay community. Therefore we wish to outline exactly what our concerns are. This brief will expand on the following issues:

- Concerns for youth: the ways in which youth and children have been treated by Project Guardian do not reflect those of a "guardian;" in addition, the youths' self-perceptions and efforts to speak for themselves are sometimes discounted; teens are diminished by being called "children" and their capacity for assessment and decision-making is belittled.
- Distortions: descriptions of the activity investigated are fraught with misrepresentations, exaggerations, and inconsistencies. In particular:
  - Although the majority of charges were laid against men alleged to have been sexually involved with teenagers, those teens are regularly - and misleadingly - described as "young boys" and "children."
  - In many instances, sexual abuse experienced by the teens when children and at the hands of family members or family friends was inaccurately linked to gay men not known to the family, who are said to have enticed them into a particular lifestyle.

- Misrepresentation of the concerns of the gay community: while we have challenged what we consider to be inappropriate actions and distortions on the part of police, we have acknowledged that exploitation has sometimes happened. Our acknowledgement of the problem and our critique of police intervention have not been fairly represented.
- Response to the gay community: our careful efforts and reasoned expressions of concern as community leaders have been treated with disdain.
- Process of the investigation: the whole process has been riddled with double standards which are not acknowledged.
- Accountability of the police: the leaders of the London police force have shown themselves alarmingly resistant to being held accountable.
- Attitude of police chief: through his own arrogance, Chief Fantino has made his leadership an issue, to the detriment of the interests of children and youth.

Knowing at the outset that the investigation, and particularly the manner in which it was hyped, would have a negative impact on our whole community, we monitored its developments.

Our decision to speak out was considered very carefully. We decided then, and we see now, that our silence would have placed our community in an even more vulnerable situation.

The police have grudgingly acknowledged mistakes only because some people have dared to challenge them. The need to hold them to account is far from over. This document will first outline the principles that are the basis for our critique and then explain our concerns.

*Please note: Before Project Guardian was instituted in the summer of 1994, the London-based investigation begun in September 1993 was called Operation Scoop. When we refer to Project Guardian we are often including actions that were a part of Operation Scoop.*

## **1 EXPLOITATION**

We have always acknowledged that there was evidence of some exploitation. We believe that evidence of exploitation must be investigated by legal authorities and the law must be used to hold people to account when there is clear evidence against them. Assuming that the following situations occurred, they are cause for grave concern:

- pre-teen children sexually interfered with as well as shown pornography, and given cigarettes and alcohol;
- a man with HIV being involved in risky sexual activity with youth with no apparent efforts to protect them from infection;
- reports from youth that particular men treated them with disrespect, even callousness.

Some members of our own community have expressed to us their concern that our advocacy efforts may be defending or be seen to be defending men who have victimized children. Most thought differently after we explained the complexities of the issues to them. Apparently some members of our community have expressed that same concern to the police and have expressed support for what they are doing, something the police have been quick to point out to us.

We are sensitive to the possibility that some people who have experienced sexual abuse during their childhood or youth will feel that our critique of police interventions invalidates their own experiences of victimization. We have made a conscientious effort to articulate our concerns in a way would not negate abuse. It is also vital that men who are sexually involved with teenagers, even in legal activity, take responsibility for any involvement that is exploitative or an abuse of power.

We acknowledge our responsibility to reflect on the exploitation that could and does happen within our community. A great deal of our energy is devoted developing or supporting services that enhance the power and self-esteem of youth within our community, and that increase respect for those youth. In fact, the preparation and distribution of this brief has been delayed several

times because those services have been our priority. We have been building links with relevant organizations and social services agencies in order to better achieve these goals.

## **2 HETEROSEXISM AND HOMOPHOBIA**

Chief Fantino has reacted vehemently to suggestions of homophobic attitudes and actions on the part of the London police force or himself. People often perceive homophobia to be a consuming emotional reaction that drives people to hostile actions. But it is possible for people to be involved in prejudicial actions without intending to be.

The concept of heterosexism is helpful in understanding our concerns. Heterosexism refers to situations where heterosexuality is assumed to be superior to homosexuality and the power is in place to reinforce that assumption. Heterosexism is so pervasive in our society today that it can be perpetuated by people in positions of authority without conscious intent on their part. It is in this context that actions by the London police force exhibit a double standard and perpetuate a negative stereotype, even if there is no deliberate homophobia on the part of members of the force.

Furthermore, Chief Fantino's attitude toward us as community leaders, which we found to be dismissive and disdainful, needs to be examined for possible elements of heterosexism and homophobia.

## **3 CLIMATE OF DISCRIMINATION**

The gay, lesbian, and bisexual communities in Canada have faced and do face unfair practices resulting from a number of laws that were ostensibly intended to protect women and children. For example, books that cross the border from the United States have been routinely seized by Canada Customs when shipped to gay and lesbian bookstores, but are displayed unchallenged on the stands in mainstream bookstores. Also, the decision in *Butler*, a Supreme Court pornography ruling intended to protect women and children against degrading depictions produced for men's pleasure, was first used against a magazine produced by lesbians for lesbians.

In Operation Scoop and Project Guardian, one of the first instances of use of the new (1993) child pornography law, a dragnet was orchestrated which severely misrepresented the nature of the activities investigated. It should not be surprising that we were suspicious of this investigation and wary of the unwarranted impact it had on our whole community.

We are accused by police leaders of making this a gay issue when they did not make it so. They fail to take into account the perpetual climate of hostility towards gay men, lesbians, and bisexuals and, in particular, the persistent myth that we are all child molesters.

The police force did not need to make the explicit connection to the whole gay, lesbian and bisexual community for the connection to be automatically made by many people in the larger community. Unfortunately, the orchestrated and exaggerated nature of the investigation and its presentation to the media has only helped to fuel that stereotype.

#### **4 WITCH-HUNT**

Most people have a strong emotional aversion to the sexual abuse and exploitation of children. This can fuel a concern that any criticism of interventions against alleged exploitation both detract from the harm that has happened and interfere with efforts to bring perpetrators to justice.

Therefore anyone who questions the actions of the police and the legal system is subject to the same aversion as the alleged perpetrators.

We have used the phrase "witch-hunt" from time to time in reference to this investigation. The appropriateness of this word lies for us in the fact that a simple accusation of being a witch was enough to cause permanent suspicion and discredit for a woman or man during periods in Western history when there were witch trials. Often the only way that a person could demonstrate their "innocence" was through death in a "Catch-22" trial.

The modern equivalent to witch-stigma is pedophilia. Men charged with sexual involvement with teenagers, even those who are of legal age to give consent for particular sexual acts, are routinely described by the police and media as being involved with "children" and "young boys." Anyone who speaks up to say that things are not as black and white as they are being presented is also stigmatized. In a radio interview on the Jim Chapman Show, March 29, 1995, Chief Fantino dismissed our careful articulation of complex issues, made at no small risk to ourselves and our community, as complaints from those who "obviously want to engage children in sexual activity."

## **5 CONCERN FOR CHILDREN AND YOUTH**

At the Police Services Board, January 31, 1995, Dr. Louise Sas from the London Family Court Clinic explained the care that is taken with alleged victims of child sexual abuse during a criminal investigation. This care appears to be blatantly absent during some of the investigations in relation to Operation Scoop and Project Guardian.

- Youth have had their sexual activities and/or sexual identity revealed to their peers by the manner in which police conducted their inquiries.
- Some say they were threatened with bogus charges, such as "prostitution," unless they testified against men with whom they were involved.
- Many feel used and manipulated in the police's efforts to identify men who paid for sex with them.
- Some report that they do not feel exploited by the activities under investigation, and resent being described as "victims."

- Some were berated by the police for wishing to have their own perspective told in their own voice to investigative reporters.

Some youth feel that the damage done to them by the police intervention was much greater than anything they experienced at the hands of the men charged.

In critiquing this aspect of police process, one of the most disturbing situations involves an eight-year-old boy, whom the police claim was victimized by two different men in two separate instances.

- Police did not speak to the boy's mother face-to-face to help her prepare to deal with the impending investigation. They informed her by phone that they were concerned that her son had been victimized and requested that she bring him to the police station.
- At the police station, the child was interviewed for four hours during which time his mother was not allowed to be present.
- Police asked the child to be helpful to them and then asked questions in such a way as to indicate what answers they would see as a help -- answers that incriminated the men against whom police were building a case.
- Although police never used the child's testimony, he was not informed of that fact; he thought he had sent men to jail by not telling the truth.
- When the boy reacted with distress to the emotional bind he was in by wanting to help the police and by not telling the truth, his mood swings were attributed to the victimization he was believed to have experienced. A counsellor said that he was in such

strong denial that it would be counterproductive for him to receive counselling at this time.

- When the child's mother told him that she believed him when he said nothing had happened, the positive change in his demeanour was dramatic.
- Efforts by the child's mother to get the police to give an account of their actions and to seek redress have met with several road-blocks.
- The October 12/95 issue of *Now* magazine quotes Chief Fantino: "We're not going to be intimidated by people who suggest there are going to be lawsuits." In the October 27/95 issue of *Xtra!* the mother asks, "Why is it that whenever I try to talk about the facts of the case, they change the subject and attack my character?"

The way the youth and their families have been treated in this investigation is hard to reconcile with the sensitive actions of a "guardian."

At the January 1995 Police Services Board meeting and in other settings, Chief Fantino has quoted youth, men who have been convicted, and a judge to illustrate the victimization that has occurred. We have no intentions of disputing those statements, but we do wish to put them in a different perspective by balancing them with other statements.

- In one case, the youths refused to make victim-impact statements which were negative about the man with which they were involved, so statements from other youths involved with other men were read during his sentencing hearing.
- A Crown Attorney asked a judge to take a professional's assessment of youth more seriously than the youths' own words and self-perceptions.

- Even though Chief Fantino quotes with approval those men who have expressed remorse just prior to sentencing, many men still believe the relationships they had were consensual.
  
- One judge said at sentencing that the youth had probably experienced more care from the men she was sentencing than anyone else in their life.

We believe that the complexities which motivate youth to be involved in sex for money or other favours are too great to allow them to be simply described as victims.

Some youth are exploring questions about their sexual identity. Some are making decisions about which they feel in control. We find it a cause for concern if the counselling and support offered to youth automatically presents their activity as traumatic and scarring, simply because it was sex with other males or involving money or other considerations.

At the same time, the impact of previous sexual abuse on current sexual activity needs to be considered. We are aware that some young people who do not feel exploited at this point in time may in the future look back on these experiences and perceive them to have been exploitative. We also believe that the best way for youth and young adults -- as with any human being -- to determine for themselves how they may wish to grow or change is to have their current self-perceptions and wishes treated with respect.

We were deeply disturbed to hear of a Crown Attorney, in the course of a Project Guardian trial, stating that the legacy left for the youth by the men is homosexuality. There is no credible scientific evidence to show that one's sexual orientation is determined by sexual activity, willing or unwilling, undertaken in one's childhood or youth.

The Project Guardian investigation -- and in particular its justifications which focus on youth as one-dimensional victims -- blocks a clearer understanding of the reasons why youth would be involved in the various sexual acts investigated. The support and assistance for the youth that Police Services Board member Andrew Stevens hoped would result from Project Guardian will be severely hampered unless the complex dynamics of teen sexuality and sexual orientation carefully understood and acknowledged.

Through our experience in the gay, lesbian, and bisexual communities we would be able to contribute to a greater understanding of youth and how to help them. But if our perspective is discounted and we are compelled to devote our energy to trying to control the damage done to our community, youth are not served to the degree that they need and deserve.

## **6 DISTORTED JUSTIFICATION FOR PROJECT GUARDIAN**

The police representatives describe the Project Guardian investigation with reference to the worst possible scenarios: pre-pubescent boys interfered with and/or enticed into sexual activity. They are aided in this by the language of the child pornography legislation which uses the term "children" to describe anyone under the age of 18, which therefore includes those old enough to have a driving license, earn a living, etc. We do not deny that younger boys may have been involved in some instances. We do challenge the distortion that all the men charged engaged in sex either that involved pre-teen boys or involved enticement.

In our dialogues with representatives of the London police force, they have insisted on two things which, after serious consideration, we must continue to call into question.

- i. Police insist that the youth were enticed by men into sexual activity. This statement is counter to our assertions that some of the youth made decisions on their own. This statement is also made in a way that does not allow for the complexities of the situations investigated. We are aware of men charged who were not involved in enticement, but were involved in consensual acts. We are convinced that some of the sexual activity which prompted charges involved youth who knew what they were involved in and made deliberate decisions to be involved.

Superintendent Balmain and Chief Fantino have made a point of stating that the police have discretion in reference to what charges they lay and when they lay them. At the first dialogue meeting, Superintendent Balmain stated that if a "seventeen-year-old hustler said, 'That's my business,' we do not have time to switch him around." At the last dialogue meeting, he restated that position in reference to fifteen-year-olds. He indicated that they would not lay charges in such cases. But it is evident to us that some of the Project Guardian charges involved such instances.

- ii. Police also insist that the vast majority of the youth involved had been sexually interfered with before they reached puberty, and we do not doubt this statement. The police leaders cite this as justification for laying charges against men even though the complainants are now teenagers. However, in almost all the cases, the sexual abuse of these youth before they reached puberty was perpetrated by family members, friends, and acquaintances of the family. It was not perpetrated by the men being arrested for being involved with them now when they are teenagers.

In their own minutes of our dialogue with them, as well as in quotes they provided to the newspapers, the London police force attempt to implicate the men currently involved with teenage boys in the sexual interference that actually occurred earlier in the boys' lives.

If the police are concerned about sexual interference which happened to the teens when they were young boys, why do they not investigate and charge the men accused of being involved with the boys when young?

Further, if a teenager's current sex-trade activities can be attributed to pre-teen exploitation, what does arresting a man currently sexually involved with him do to redress the earlier exploitation?

We believe that, if the contents of the investigation are overstated, scapegoating will result. It is certainly the case that abuse occurs in our society, but it is vital to be precise about the nature of the abuse as well as exactly who the perpetrators are. When society does not know how to deal with, or refuses to face, harmful acts such as sexual abuse within families, a process of projection enables society to lay the blame on gay men, lesbians, and bisexuals instead.

In his presentation to the January 1995 Police Services Board meeting, Dr. Peter Jaffe of the London Family Court Clinic emphasized that the answer to exploitation of children and youth was early intervention. Society cannot pretend that the root problem of exploitation has been dealt with, as far as the young people involved in Project Guardian are concerned, by convicting the men now facing charges.

By implying that arresting the men involved with teenagers remedies the abuse suffered in their childhood, Project Guardian does nothing to fulfil the need for early intervention. It offers the tempting illusion that the problem has been dealt with by the arrests that have occurred.

<b>7      DOUBLE STANDARD</b>
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Part of our critique of police actions is that their investigations of alleged illegal activities are not consistent. We particularly observe them exercising a diligence in reference to Project Guardian that is not matched in comparable instances involving men and female youth.

- The case of Officer Gateman, of the London police force, has received a great deal of media scrutiny because decisions were made not to lay charges. The incident involves a

seventeen-year-old female escort who allegedly was forced to have anal intercourse and vaginal intercourse with the officer and a male friend of his. This appeared to be opportunity to lay charges similar to those laid against men charged in the Project Guardian Investigation: sex for consideration with someone under 18, anal intercourse with someone under 18, anal intercourse with more than two people present, and sexual assault. Charges were only laid after the woman herself took legal action and persuaded a Justice of the Peace to lay criminal charges.

- Another comparable case is that of the Execu-stress massage parlour where a number of the masseuses were female youth under the age of 18, allegedly involved in erotic massages and reverse massages (when the client massages the masseuse -- frequently while masturbating). Charges were laid against the owner. No charges were laid against male clients. The justification provided by Superintendent Balmain on *Rough Cuts* (CBC Newsworld) documentary, "After the Bath," was that the masseuses were made up to look older than eighteen. The justification provided by Superintendent Balmain in the April 1995 dialogue meeting was that there was not enough evidence to lay charges. He stated that the masseuses denied being in any sexual situations, and men who were clients, when contacted, denied being involved in any sexual situations. Many clients could not be contacted because the client list did not use their real names. So the police were apparently stymied and could not proceed. We are convinced that if the police had used the same investigative efforts and interrogation techniques in relation to Execu-stress that they used in Project Guardian, they would have uncovered another "sex ring" with plenty of opportunity to lay charges.

When we suggested to the police that there did not appear to be the same energy concentrated on the exploitation of female children and youth, they responded that they are constantly laying such charges but the media ignore their media releases. They dismissed our suggestion that they could draw attention to the problem by orchestrating a media conference similar to those they organized in reference to Project Guardian.

Various studies show that men sexually involved with male children and youth are much more likely to be charged, are much more likely to be convicted, and receive far stiffer sentences than those sexually involved with female children or youth.

<b>8 JUSTICE IS NOT ALWAYS BEING SERVED</b>
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Some dynamics involving the men charged give rise to concern about due process.

- Many men pleaded guilty to anal-intercourse-related charges without ever being informed by their lawyers that the anal-intercourse section of the Criminal Code had been ruled unconstitutional in the Ontario Court (General Division) in July 1992, before Project Guardian started. This ruling was under appeal by the government; the men could have applied to have charges adjourned until after the appeal ruling. (In May 1995, the Ontario court of appeals upheld the ruling that the differential age of consent for anal intercourse is unconstitutional, and London police announced publicly that they would drop the 22 outstanding charges on this count.) For details of the rulings, please see appendix B.
- Superintendent Balmain informed us at the April 1995 dialogue meeting that no more anal intercourse charges would be laid in the context of Project Guardian, both because of a February federal court ruling against the anal intercourse law, and because they anticipated that the appeal would be lost and the law would be stuck down as unconstitutional. But in fact, since the February ruling was in a deportation case, its impact was uncertain, and in any case the law had been under appeal since January 1993. It was not necessary to lay the charges at all.
- A man in his early twenties, who was charged with having anal intercourse in the context of a relationship with a 17-year-old, was described by a judge as a "homosexual pedophile."
- One case involves no youth, but only three adult men having anal intercourse in each other's presence.
- In the first defended case that came to trial the charges were thrown out; the defence lawyer described them as "trivial," based on "suppositional evidence underpinning scurrilous charges." Key to the withdrawal of the charges was the investigative work of reporter Joseph Couture which the police have derided so intensely. The man's lawyer

described the accused as being on the "very fringe" of Project Guardian. We have reason to believe that many people implicated are on the "fringe" of Project Guardian and that this fringe is very frayed. More and more charges are being withdrawn or result in acquittal as cases are coming to court in which the accused are mounting a defence.

- Several complaints and law suits have been initiated because of the manner in which the investigation has been handled.

There are many other issues that disturb us about how this investigation was handled. We have endeavoured to be as accurate as possible and at the present time, with limited resources for investigation, cannot confirm everything that has come to our attention. We believe there needs to be further examination of reports we have heard indicating that:

- some youth were encouraged by police officers to apply for victim's compensation of up to \$25,000 before the cases in which these youth were witnesses came to trial;
- some accused were pressured or threatened into pleading guilty to crimes that they did not commit, in the context of a large number of charges, in order to get through the legal proceedings more quickly;
- complainants were pressured or manipulated into giving false testimony;
- charges without substance were laid, not pursued as part of plea bargaining, but were part of the judge's assessment when deciding on the severity of sentences;
- sometimes bail was set excessively high and men were intimidated into pleading guilty to avoid prolonged incarceration before trial;
- some complainants attempted to extort men and, when they did not receive satisfaction, went to the police with accusations that do not have substance;
- there are even contradictions in the accounts of how the video tapes (that launched Operation Scoop) were found (as reported in *Xtra!*, November 10/95).

## **9 CONTRADICTIONARY STATEMENTS MADE BY POLICE**

In our dialogue meetings with the police, we encountered several contradictory statements.

- At one point Chief Fantino stated that it never even entered their heads that the conduct of the investigation might have a negative impact on the gay, lesbian and bisexual community and he cited this as evidence of how non-discriminatory he and the police force are. Yet later in the same meeting he stated that police had agreed from the beginning to take great care not to identify the investigation as gay-related.
- Chief Fantino, while reproaching gay community leaders for lack of cooperation, also made the ludicrous suggestion that representatives of HALO, the Homophile Association of London Ontario, offered HALO's membership list to the police.

Their actions with regard to the media were no clearer.

- Police representatives blame the media for perpetuating the perception that the investigation was a child pornography investigation and claim that they tried to change the perception without success. Yet their news releases show that they continued to call it a child pornography investigation for months after they knew that child pornography was no longer the focus.

## **10 ORCHESTRATED USE OF MEDIA**

Objective #3 of Project Guardian is: "To use information gathered to inform and educate members of the public, law enforcement, and social agencies." Yet we have been dismayed to see leaders of the London police force over-simplify, distort and misrepresent very complex issues to justify their actions.

- One of the most serious distortions: a press conference was orchestrated to display hundreds of videotapes as evidence of huge pornography activity. The tapes were used in the press conference by Chief Fantino as justification for seeking the province-wide

mandate and funding from the Solicitor General's Office (which resulted in Project Guardian). No charges have ever been laid in relation to the hundreds of videotapes presented at the press conference, because they were either legally purchased, commercially produced pornography or videotapes of feature length movies or television shows. The owner of the tapes is suing the London police force because of this misrepresentation.

Chief Fantino acknowledged that the investigation looks different now from when it first began and that, in the context of the fuller knowledge the police now have, things reported to the media early on would not now be presented in the same way. We asked that Chief Fantino and Superintendent Balmain therefore take steps to correct misperceptions that continue to be reported by the media. No such steps have been taken.

The corrections that still need to be made include:

- the investigation and arrests are not primarily concerned with pornography;
- most of the material seized does not support the laying of criminal charges;
- the majority of men charged as a result of Project Guardian did not know each other and therefore could not be part of ring which "passed around boys;"
- the boys involved are not primarily pre-teens.

While police have used the media for their orchestrated announcements in press conferences, releases, and interviews, they have not hesitated to denounce media response they feel is unfavourable to them.

Controversy has been raised by the fact that the extensive *Globe and Mail* analysis, "The kiddie-porn ring that wasn't" (March 11, 1995), was written by Gerald Hannon who has been a long-time advocate for removing laws governing age of consent for sexual activity so that a distinction can be made between consensual sex and assault in the cases of youth and children as well as adults. An aversion to his position on age of consent does not give anyone licence to ignore his carefully researched and well written analysis.

The investigative reporting of Joseph Couture is a crucial source for our critique of Project Guardian. Although the London police force has consistently belittled his work, their response to our repeated requests for information as to how and where his information was incorrect was to point out minor errors in early material printed by leaders within the gay and lesbian community in London. Such errors were not Couture's responsibility and were corrected as soon as they were brought to our attention, often by Couture himself. Couture has not been part of the dialogue with the London police force; in fact, the police set as a condition of the dialogue that he not be allowed to participate. Although we are supportive of Couture and remain indebted to him for his efforts to allow youth to be heard in their own voices, this document does not necessarily represent his views and perspectives.

## **11 DISREGARD FOR COMMUNITY CONCERNS**

After it was suggested to London police officers by members of the gay, lesbian and bisexual community that dialogue with leaders of the community might defuse some of the criticism, the leaders of the force initiated a dialogue. Meetings occurred in November of 1994 and February and April of 1995.

After three dialogue meetings we agreed with representatives of the London police force that there seemed to be no point in continuing the discussion. No one's expressed opinions had changed in any substantive way. There seemed to be no possibility for resolution of disagreement.

Although the police leaders expressed disagreement with our concerns, they gave little indication that they understood our concerns. They either quibbled with details or repeated denials that

they were targeting the gay community. Even if we accepted their denials at face value, it still does not address our basic critiques.

We still have fundamental concerns that police have not adequately addressed.

- Youth were not treated properly.
- Police justifications of the investigation seriously distorted the reality of many of the activities investigated.
- Police sensationalized and exaggerated much of the substance of the investigation, in a way that suggested a double standard.
- Police have ignored our concerns, and attempted to belittle our leadership with descriptions such as "morally corrupt," and "terrorists," then criticized us for not coming to them with our concerns before making public statements.

The arrogance and disdain we have encountered give rise to grave concerns about the ability of leaders in the London police force to embrace community policing and community dialogue. We need a police force that demonstrates a willingness to be held accountable.

## **12 CHIEF FANTINO'S LEADERSHIP**

Chief Fantino has made his leadership an issue by the way in which he has conducted this investigation and responded to our concerns.

- He has been scornful of our leadership role in our community and has attempted to reduce us to a "special interest."
- He has dismissed specific and concrete criticisms as rhetoric -- with great flourishes of his own rhetoric.
- He has consistently personalized our carefully reasoned questions about actions, and he appears incapable of receiving critique without seeing it as a personal attack.
- He strongly denounced as unfair our suggestion that actions of his might be seen as homophobic, yet did not hesitate to describe us with sweeping and contemptuous labels.
- He consumed a large portion of the second meeting in which we attempted dialogue by attacking Richard Hudler; he openly acknowledged that he was, in fact, doing so.
- He has shown a strange compulsion to protest his professionalism and integrity at every turn.
- In referring to street youth and panhandlers, he implied that they are garbage by referring to the role of the police as that of janitors.
- In a published letter, he has compared himself to Jesus Christ, "brutally betrayed" by a "Judas," as if he has a great mission and expects to have a following, rather than be a leader that is accountable to the community he was hired to serve.

## **13 CONCLUSION**

We acknowledge that exploitation has happened while pointing out the harm done by distortions, exaggerations, clumsiness, and unfairness on the part of the police investigation. The sexual exploitation of children and youth which Project Guardian has exposed does not justify:

- police threatening and manipulating children and youth,
- due process of justice being violated,
- men being unfairly accused and left with residual suspicion,
- the practice of double standards when intervening,
- exaggerations, distortions and fear-mongering, and
- police resistance to being held accountable.

<b>14 CALLS FOR ACTION</b>
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**LONDON POLICE SERVICES BOARD**

We call on the London Police Services Board to:

review our concerns and the actions of the London police force in reference to Project Guardian and give an account of those actions; and

make a concerted effort to correct public misperceptions about Project Guardian in fulfilment of Project Guardian's public education mandate.

**LONDON CITY COUNCIL**

We call on London's City Council to:

hold the Police Services Board to account in reference to a review of Project Guardian; and

ensure that the London police force is more responsive to and respectful of community concerns.

**SOLICITOR GENERAL**

We call on the Solicitor General of Ontario to:

scrutinize any funding requests for investigations similar to Project Guardian.

## **ATTORNEY GENERAL**

We call on the Attorney General to:

launch an independent public inquiry into Project Guardian and how it was conducted by the police and by the court system.

## **SOCIAL SERVICE AGENCIES**

We call on social service agencies who are dealing with the complainants from Project Guardian to:

analyze the assumptions about exploitation on which their interventions are based;

ensure that staff members are sensitive to issues of sexual orientation and sexual identity;

make use of the resources of the Social Services Committee of the Homophile Association of London Ontario, and those counsellors services with which it has contact; and

join with us in responding to and working to prevent sexual exploitation of children and youth in a manner that avoids double standards and scapegoating.

## **GAY, LESBIAN, & BISEXUAL ORGANIZATIONS AND HIV/AIDS SERVICE ORGANIZATIONS**

We call on gay, lesbian, and bisexual organizations, as well as HIV/AIDS service organizations to:

reflect on the dynamics of sexual exploitation and develop strategies that can help reduce its occurrence; and

increase services and foster a supportive social environment for gay lesbian and bisexual youth in order to enhance their self-esteem and self-empowerment.

**MEDIA**

We call on the media to:

analyze their coverage of Project Guardian and similar stories to ensure that their reporting is as precise as possible; and

take initiative to ask challenging and analytical questions of the police, particularly when police are orchestrating a media response to their own investigation.

Appendix A: **YOUNG PEOPLE AND SEX: WHAT IS LEGAL**

**The Ages of Consent**  
Canadian Criminal Code, §150-159

At any age, sex without consent is assault. Consent is not valid if obtained through force, threats, fear, or lies about what is going to happen. Age of consent laws go one step further and make sexual acts legal or illegal according to the age of the people, whether they consent or not.

In Canada, the basic age of consent is 14. Anyone who is 14 or over can consent to having most kinds of sex with anyone else who is 14 or over. But there are some exceptions that allow or prohibit sexual activity below and above that age.

At any age incest and bestiality are illegal. Incest is defined as sexual intercourse with a family member who is a parent, child, brother, sister, half-brother, half-sister, grandparent, or grandchild. Bestiality is sex with animals.

Anal intercourse is only legal in a private place when only two people are present.

It is illegal for anyone for a sexual purpose to expose their genitals to a person under 14, to touch the young person directly or indirectly, or to "invite, counsel, or incite" them to touch themselves or anyone else.

It is not illegal for a young person to sell sex, but it is only legal to pay someone for sex if they are at least 18 years old. It is also illegal to obtain, or attempt to obtain, sex with a person under 18 in exchange for food, housing, money, drugs, etc.

When either person is in a position of trust or authority or a relation of dependence, the age of consent for sex or asking the young person to engage in "sexual touching" is 18. This law applies to babysitters, teachers, life guards, coaches, guardians, social workers, childcare workers, etc., whether or not they are under 18 themselves.

People who are 14 or 15 can have sex with people under 14 who are less than two years younger (14-12, 15-13) as long as they are not in a position of trust or authority.

People 12 or 13 years old can have sex with anyone without being charged unless they are themselves in a position of trust or authority over their partner.

The Criminal Code does not apply to the actions of persons under the age of 12. But even though they have broken no criminal laws, sexually active young people may still be taken into custody under provincial child welfare legislation.

Someone who mistakenly believes that a sexual partner is over the legal age of consent would have to demonstrate that they took "all reasonable steps" to know the age of the young person.

The maximum penalties for breaking the age of consent laws range from 5 to 14 years in prison. Repeated violations, whether or not the acts were nonviolent and consensual, may result in classification as a dangerous offender and imprisonment for life.

### **The Law on Child Pornography**

A new law on "child pornography" was passed in the summer of 1993.

For the first time, it criminalized the possession of child pornography. What had been legal to possess the day before the law passed was illegal the day after. There was no amnesty period for disposing of previously legal material.

It expanded the definition of "child" to include youths up to the age of 18. It also made it criminal to take a picture of a legal act such as two 16 year-olds having sex, even if the picture or film was made by them for their own enjoyment. This includes not only those between the ages of 14 and 18 but those who look as though they might be under 18. It also includes material such as drawings where no actual young people were involved.

Criminal Code, section 163.1

- (1) In this section, "child pornography" means
- (a) a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means,
    - (i) that shows a person who is or is depicted as being under the age of eighteen years and is engaged in or is depicted as engaged in explicit sexual activity, or
    - (ii) the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of eighteen years, or
  - (b) any written material or visual representation that advocates or counsels sexual activity with a person under the age of eighteen years that would be an offense under this Act.

Information taken from the pamphlet "Young People and Sex" produced by Forum 128 and CLGRO, the Coalition for Lesbian and Gay Rights in Ontario.

Appendix B: **RECENT COURT RULINGS ON ANAL INTERCOURSE**

Although the age of consent for most forms of sexual activity was set at 14 when the Canada's Criminal Code was changed in 1988, the age of consent for anal intercourse was set at 18 (except for married people, the government choosing to recognize only heterosexual marriages). Anal intercourse is the only sexual activity rendered illegal even when the proponents are of legal age solely by the presence of a third party. Recent court decisions include:

July 92 In the case of *Carmen M*, Ontario general court judge Madam Justice Marie Corbett rules unconstitutional the criminal code provision against anal intercourse with a person under 18 (punishable by up to 10 years in jail). The case involved a man, 27, and a girl, 14.

Jan 93 *Carmen M* ruling (July 92) against the ban on teen anal sex is appealed by crown.

Aug 93 Henry Halm, convicted in the US of (consensual) anal intercourse with 15- and 16-year-olds, fights deportation order to US by challenging the constitutionality of Canada's anal sex laws.

Nov 94 The Crown's appeal in *Carmen M* on the age of consent for anal intercourse comes to court.

Feb 95 In the case of Henry Halm, federal court justice Barbara Reed rules the 18-year age of consent for anal sex is unconstitutional.

May 95 The Ontario court of appeal decision in the case of *Carmen M* is released. The three judges agreed that a differential age of consent for anal intercourse is discrimination on the grounds of age and found it unconstitutional.

Appendix C: **SUGGESTIONS FOR THE MEDIA**

**SUGGESTIONS FOR MEDIA  
ON HANDLING ALLEGED SEX "CRIMES" INVOLVING GAY MEN**

*[Adapted from a document prepared by The Boston/Boise Committee during the 1978 Boston sex scandal which "sought to mobilize prejudice against gay rights by depicting all gay men as child molesters and kiddie pornographers."]*

THE FOLLOWING MEDIA SAFEGUARDS WOULD PROTECT DEFENDANT AND WITNESS RIGHTS:

- not publishing the names, addresses or exact employment of the accused;
- not emphasizing personal data that has no proven relationship to the crime;
- not publishing photographs of the accused;
- not publishing police leaks or other unproven statements about impending arrests of unnamed men;
- recognizing "tip-of-the-iceberg" comments by police or crown attorneys as fear mongering that affects the rights of all gay men, especially professionals involved legitimately with teenagers in their work or personal lives;
- not describing witnesses in any way by which they can be identified by their peers.

SUGGESTED APPROACHES TO INVESTIGATING, REPORTING OR PUBLISHING  
CASES INVOLVING PORNOGRAPHY AND PROSTITUTION:

- asking direct and probing questions of police, lawyers and elected officials involved in the case, remembering that these people sometimes depend on sensationalism (including charges later modified or dropped for unsubstantiated evidence) to get media coverage and public approval;
- asking the police how the witnesses were located, how their "complaints" were generated, whether the witnesses themselves have been charged or threatened with charges, and whether they have been provided with neutral legal counsel;
- not linking dissimilar crimes simply because they are announced as part of the same investigation, and perpetuating guilt by association;
- being sensitive to the tremendous fear of homosexuality in our society and not pandering to it any more than racism or other prejudices;
- remembering that "communicating" and other prostitution related offenses result in vigorous prosecutions of women, while their customers usually go free (and unnamed), whereas the opposite is often the case among gay men and boys, where the client is prosecuted and the prostitute is coerced into giving testimony;
- checking several diverse sources to verify if charges have merit (including court documents which provide precise charges against the accused) and contacting sources such as accused men or their lawyers for their reaction;
- giving equal space and prominence to stories that deal with alleged police harassment, mishandling of cases and evidence of innocence;

- giving equal prominence to stories that reveal serious errors in previously reported investigations or when previously reported charges have been retracted.