

Lolita's lesson learned

Tara Gutman, legal and business affairs executive at Beyond Films, argues that the public outcry over Lolita simply showed how widely the Classification Act can be interpreted

The recent furore over Adrian Lyne's 1996 remake of *Lolita* has ended with a whimper rather than a bang. While the film industry and free speech commentators boasted the outcome of the appeal application as a victory for their respective interest groups, in fact no such glory can be rightfully claimed. The decision of the Classification Review Board (CRB) was not that *Lolita* should not be banned, nor was it that the Office of Film and Literature Classification (OFLC) at first instance was correct in its finding that the film warranted an R rating, its decision was merely that the applicants did not have standing to bring an appeal.

As the theatre box office slows to a trickle and the video goes into manufacture, it is timely to re-cap what happened and consider whether the process proved itself to be an effective one.

Background

Lolita was awarded an R rating by the board of the OFLC after prolonged deliberation which involved consultation with a panel of experts working in the fields of paedophilia, child sexual abuse and criminology. Its conclusion was that "while the theme of child sexual abuse has a very high degree of intensity and the depictions of realistic violence have a strong impact, these are not sexualised, gratuitous or exploitative to the extent that an 'RC' (Refuse (sic) Classification) is warranted."

Three applicants, non profit groups from Western Australia (WA) who sought to have *Lolita* refused classification brought their application for appeal. Of the three organisations the CRB exercised its discretion to waive the application fee in respect of two: Helping All Little Ones (HALO) and an individual on behalf of the Child Protection Connection (CPC). The third declined to pay the fee and was not heard. The film's distributor, Beyond Films, was invited by the CRB to comment because its interests would be affected by the outcome of the decision.

It is worth noting that there is no requirement for an applicant to have seen the film. Both applicants stated that they refused to see it because they considered the story abhorrent. Sensible argument is seriously impaired when the complainants do not have the capacity to address the specifics of the subject matter of their complaint. Most other opponents to the film, including liberal backbencher Trish Draper who spearheaded the initial campaign, ceased to publicly denounce it after they had actually seen it. No person or organisation who viewed *Lolita* made a formal complaint to the distributor or to the CRB.

Before considering whether *Lolita* should be re-classified, it was necessary for the CRB to determine whether either of the applicants had standing. Subsection 42(1) of the *Classification (Publications, Films and Computer Games) Act 1995* allows that four categories of people may apply to CRB for a review of a

decision made by the OFLC:

1. the Minister;
2. the applicant for classification;
3. the publisher;
4. a person aggrieved by the decision.

The applicants submitted they were "aggrieved persons". The CRB requested that submissions on both standing and the substantive question be made prior to it making a determination on standing. The substantive issue was whether or not the film offended against the standards of morality, decency and propriety generally accepted by reasonable adults.

"Aggrieved Person"

Because the term has never been judicially considered in the form in which it appears in the Act, the CRB suggested that the applicants consider the expression as it has been understood in case law.

In essence, the cases tell us that an aggrieved person must have a "special interest" in the subject matter of the decision above a mere intellectual or emotional concern. The subject matter must be relevant to the activities of the organisation. The nature of the services provided is relevant as are: the outcomes of the work of the organisation to date; the representative nature of their organisations, i.e., the geographical area in which they operate the number of members; whether the membership includes other organisations.

One factor identified in cases and questioned by the CRB and not affirmed in its written decision was an organisation's financial capacity to represent the public interest effectively, faithfully and adequately.

HALO is a voluntary support group for WA families using the Family Court processes that seeks to raise awareness

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require champions to maintain their freedoms of speech, she said.

The final speaker at the seminar was Sue McKnight, university librarian at Deakin University and Victorian Branch president of the Australian Library Information Society.

She said that while librarians were custodians of knowledge or at least of its access, they were not censors and did not and should not decide what should and should not be seen. Librarians were not gatekeepers, they merely kept the gateways open.

She added that libraries had an important role in maintaining the diverse perspectives that existed in Australian society. Librarians must select and make available material based on professional considerations, not on political, moral or religious views.

Libraries opposed any form of censorship which sought to govern the professional lives of librarians. There should be no discrimination due to race, creed, gender, age or any other reason, she said.

She believed that material should not be regulated even if it was controversial or could offend some members of the library community. For this reason, every library needed a Collection Development Policy that guided what it was that should be purchased on limited resources.

McKnight said that the new Bill could be in contravention of the United Nations Universal Declaration of Human Rights which defends and protects intellectual freedom. She argued that in terms of online regulation, a code of practice would be of greater assistance to libraries rather than the legislation.

At the completion of the seminar, many of the audience took part in a rally on the steps of the State Library protesting against the Broadcasting Services Amendment (Online Services) Bill. <

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and advocate on Child Protection issues. It is an unaffiliated organisation with 30 full members at its several branches, all in WA. The CPC is an unincorporated association formed in January 1999, with six members whose objectives include "making parents aware of how to protect their children from predators".

The CRB declined to deal with the case on several grounds including that the special interest requirement was not met in relation to either applicant and that the CPC did not show that it was sufficiently representative. As such, neither organisation qualified as aggrieved persons. In their reasons for decision, the CRB noted that the meaning of "person aggrieved" as defined in relation to the *Administrative Decisions (fiducial Review) Act 1977* (Cth) and the *Racial Discrimination Act 1975* (Cth) were instructive although not definitive in the context of the Classification (Publications Film and Computer Games) Act 1995.

In relation to the substantive issue, there was some discussion about section (a) of the Refused Classification section of the Guidelines. The section states that:

"Films and videos will be refused classification if they contain:

(a) depictions of child sexual abuse or any other exploitative or offensive depictions involving a person who is or looks like a child under 16".

The CRB put it to the distributor that this could be interpreted to mean that any such depiction requires a film be refused classification. It was submitted in reply that this provision ought to be read in the context of the preced-

ing paragraph which states that the depiction must be in a manner "likely to cause offence to a reasonable adult person", and that in any event these guidelines must be subservient to the Act. It was also considered that the word "depiction" in this context appeared to mean portrayal of actual sexual abuse. This explanation is consistent with the OFLC's decision which found "that the film does not contain depictions of actual child sexual abuse".

If "depiction" means simply portrayal then there could be no classified films which show drug misuse, addiction, crime, cruelty or violence. According to the guidelines these are also to be refused classification only when the depiction offends "against the standards of morality, decency and propriety generally accepted by reasonable adults..." This investigation showed that the guidelines lack clarity, and are poorly drafted.

The lesson to be learned from the application to appeal is that the CRB is still finding its way as far as both the interpretation of the Act goes and the inter-relationship of the Act with the code and the guidelines. Further, the fact that the decisions of both the OFLC and CRB are not reported or publicly accessible contributes to the public's lack of understanding of the role and results of those statutory bodies. <

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