

In re:

Appeal against the classification of the film - Rabbit Proof Fence

Award..

Professor Karthy Govender
Chairperson

This film is about courage and determination. Three Aborigine girls of mixed parentage are removed from their community at Jigalong Depot and taken to the Moore River Native settlement. This removal is part of a specially designed programme of breeding out the aborigine heritage from children of mixed blood while assimilating them into the European community. At the camp they are required to speak English only and are taught English habits and ideas by the nuns. The fairer skinned children are singled out and selected for different education. The policy is enthusiastically implemented in the belief that it is in the long term interests of all concerned, particularly that of the Aborigine society.

The girls, led by Molly the eldest, decide to run away from the camp and follow the rabbit proof fence which divided the country back to their community. They run away from the school and are pursued by police and a tracker. They manage to elude those pursuing them. However one of the girls is tricked into going to a railway station and is captured. The other two girls withstand many trials and tribulations and ultimately complete the arduous journey of over a thousand miles and return home.

The classification committee, after discussion, decided that the appropriate classification would be 13 (P). One of the examiners recorded an objection to the inclusion of the prejudice advisory. The committee was in agreement, that the main classification element is the theme of separation and forced assimilation. It was considered that the removal of the children from their community, subjecting them to social control and then subsequently tracking them like animals when they escape, justified the 13 age classification. It was felt that this may be disturbing to children thus justifying the restriction. A trailer advertising this film was also given a 13 classification. Our comments and findings apply to both the trailer and to the film.

United International Pictures appealed against both classifications indicating that they were of the view that the classifications were incorrect. Further and more detailed submissions were made to us at the hearing of this matter.

As we indicated in our previous awards, it is necessary to start from the premise that films should be given the least restrictive classification and then adjusted in accordance with the Constitution, the Film and Publication Act and the guidelines. Section 39(2) of the Constitution provides:

When interpreting any legislation, and when developing the common law or customary law, every court, tribunal or forum must promote the spirit, purport, and objects of the Bill of Rights.

This must be read with section 8(1) which provides that the Bill of Rights applies to all law and binds the legislature, the executive, the judiciary and all organs of state.

Both the classification committee and the Board are organs of state as defined in the Constitution. Both are therefore bound by the Bill of Rights and are required to promote the spirit, purport and objects of this chapter of the Constitution.

The most directly applicable right in our context is the freedom of expression which

provides as follows:

- 16 (1) Everyone has the right to freedom of expression, which includes-
- (a) freedom of the press and other media;
 - (b) freedom to receive and impart information or ideas;
 - (c) freedom of artistic creativity; and
 - (d) academic freedom and freedom of scientific research.

The section does not extend to propaganda for war, incitement of imminent violence or the advocacy of hatred that is based on race, ethnicity, gender or religion, and that constitutes incitement to cause harm. This means that expression falling within these categories are unprotected and can be modified, restricted and even prohibited. Expression falling outside these categories are regarded as protected.

The freedom of expression, like all other rights in the Bill of Rights, is subject to a general limitation clause which allows rights to be limited in terms of a law of general application provided that it is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom.

The Film and Publication Act 65 of 1996 (as amended) is a law of general application and one of its objects is to regulate the creation, production, possession and distribution of certain publications and certain films by means of classifications, the imposition of age restrictions and the giving of consumer advice. The guidelines that have been promulgated assist in the exercise of this discretion.

Professor Lawrence Tribe, a leading US commentator has identified two main justifications for the freedom of expression. He correctly argues that the freedom of expression is important as a means to some further end like successful self government or social stability or the establishment of a functional democracy. This he describes as an instrumental objective. Freedom of expression is also important as an end in itself. It is the right of

human beings to communicate and exchange ideas with each other simply for the sake of doing so.

The freedom of expression is related to many other rights in the Bill of Rights and in some instances, other rights are depended on it. As O= Regan J put it in *South African National Defence Force Union v Minister of Defence* 1999 (4) SA 469 at para 8:

freedom of expression is one of the >web of mutually supporting rights= in the Constitution. It is closely related to freedom of religion, belief and opinion (s15), the right to dignity (s10), as well as the right to freedom of association (s 18), the right to vote and to stand for public office (s19) and the right to assembly(s 17). ... the rights implicitly recognise the importance, both for a democratic society and for individuals personally, of the ability to form and express opinions, whether individually or collectively, even where those views are controversial.

Thus the freedom of expression enables us to develop as individuals and effectively exercise a host of other rights.

The decision to assign a 13 (P) classification to the film means that all persons under 13 are prevented from viewing this film. This means that there can be no communication of this expression to persons under the age of 13. Before we reach this conclusion we must be satisfied that it is reasonable and justifiable in an open and democratic society to do so.

Clearly if there are scenes of nudity, brief scenes of implied sexual activity or scenes of violence, strong language or drug abuse there would be little difficulty in justifying the restriction. We agree with the examiners that these elements are either absent or not present to any appreciable degree in the film under consideration.

The position is more complicated when all these tangible and identifiable elements are absent and the concern is that the theme may be troubling or uncomfortable to children under the age of 13. The Constitutional Court has suggested a balancing approach when

applying the limitation clause. It has held in *S v Makwanyane* 1995 (3) SA 391 (CC) at para 104:

In the balancing process, the relevant considerations will include the nature of the right that is being limited, and its importance to an open and democratic society based on freedom and equality; the purpose for which the right is limited and the importance of that purpose to such a society; the extent of the limitation, its efficacy, and ... whether the desired ends could reasonably be achieved through other means less damaging to right in question.

Applying this to our context, we would have to determine whether the concerns about the theme of the film are such that it would be reasonable and justifiable for us to prevent it being seen by children under the age of 13. A powerful message about the lack of respect for the culture and dignity of a people is conveyed memorably through this film. Children watching this film will absorb much more about the costs of disrespecting others than they would from many lectures on the topic. The film, while dealing with the abuse of rights of Aborigines in Australia, deals with the more universal concerns of tolerance and the need to respect the rights of others. The film explores a social order that has many parallels with the apartheid society which would be very interesting for children to explore, debate and reflect upon. Some of these are:

- The complete obsession with the belief in the supremacy of the European culture.
- A clinical and efficient implementation of an ideology without regard to the costs.
- Heroic and courageous resistance to such implementation.
- The process of reparation that often follows such implementation. This is a film that was made with the assistance of the Australian Film Commission. Australian society is now reflecting on their treatment of Aborigines.
- The concept that one person could be the upper guardian of all Aborigines. The white State President was the supreme chief of all Africans in South Africa.
- The idea that once something is enacted into law, it must be respected, no matter

how unjust. In the scene where the children are removed, the police officer repeatedly states, 'I have got the paper Maud' referring to the lawful authorisation to seize the children. Police officers with papers violated many human rights of South Africans.

- The role of organised religion in the implementation of these policies.

The scenes depicting the forced removal of the children from their parents are disturbing, The lamentation that follows is shocking and the audience shares the grief and feels the pain of the grandmother knocking a rock against her skull. These are powerful and evocative scenes, but they are vital as they convey the depth of feeling and the human costs of the programme embarked upon by the Australian government. The very purpose of these scenes is meant to make us feel uncomfortable and to understand the human anguish felt by the community. We feel it from the perspective of the victims.

It is likely that films about the truth and reconciliation process in South Africa will, thematically, be no less disturbing than this film and contain scenes no less evocative and powerful.

Turning to the question posed above, we are of the view that this is a film that should be seen by as many people in this country as possible in order to stimulate debate, dialogue and reflection about its message. The concerns identified by the Classification Committee are valid and need to be considered. However we are of the opinion that these concerns can be accommodated by a less intrusive classification such as PG. This classification will alert parents to the fact that the film contains material that might upset some children. Such a classification will achieve the appropriate balance. This would give those parents who wish to expose their children to a socially relevant film the option of allowing them to see it. The same considerations apply to the trailer.

We are of the opinion that it is unnecessary to have a consumer advisory for prejudice. This is a depiction of historical events which exposes the cruelty and harshness of the

obsession of Europeanizing the Aborigines. It deals with prejudice, but only at the level of warning about the dangers of this sort of behaviour. This is the unanimous view of the Review Board.

Conclusion:

Both the trailer and the film Rabbit Proof Fence should be classified as PG.

13th October 2002

Concurred by:

1. Satish Juggernath
2. Andrew Verster\
3. Rene Smith
4. Ronald Lessick
5. Penny Marek