

## **Before the Film and Publication Appeal Tribunal**

In the matter between:

**United International Pictures**

and

**The Film and Publication Board**

**1/2012**

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### **Award**

In re: Appeal against the classification of the film:

***Safe House***

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**Professor K. Govender**

Chairperson

### **Introduction**

- 1) The Appeal Tribunal viewed the film and heard argument on the 11<sup>th</sup> of February 2012. We decided to assign the film a restrictive age classification of 16 with an advisory for violence, and the parties were notified of our decision on the 13<sup>th</sup> of February 2012. These are the reasons for our conclusion. At the hearing on the 11<sup>th</sup> of February 2012, the applicant was represented by Mr Mark Rosin of Rosin Wright and Rosengarten, a firm of attorneys in private practice. The respondent was represented by Mr S.M. Risiba, its Legal and Regulatory Manager, and by Mr Enver Samuels, a chief examiner. We are appreciative of the arguments, both written and oral, made by the parties.

## **Description of the film**

- 2) *Safe House* is a block-buster thriller about espionage and counter-espionage. It is a high budget film starring Denzel Washington and Ryan Reynolds in the main roles, and the car chase scenes are compelling and engaging. Matt Weston, a relatively junior CIA operative, is stationed at a safe house in Cape Town with precious little to do. Tobin Frost, a rogue CIA agent who has been selling secrets to all and sundry for over a decade, negotiates a deal for the purchase of a micro-chip containing incriminating information from a former MI5 agent. Pursued by those who want access to the chip, Frost turns himself over to the US Embassy in Cape Town, and is entrusted to the 'safe house' in the custody of Weston. Interrogators are dispatched to elicit information from Tobin. The safe house is attacked by a squad who have obviously been provided with confidential information on the whereabouts of Frost. Frost and Weston escape from the safe house, with the latter determined to deliver Frost safely to the CIA. The film then plots the attempts by the pair to elude the pursuing squad as Weston learns that his idealism and trust in the CIA may have been misplaced. The film ends on a relatively positive note with the media revealing corrupt agency activities and some of the leaders being held accountable.

## **Assessment of the arguments**

- 3) A three-person classification committee viewed the film on the 25<sup>th</sup> of January 2012 and were unanimously of the view that a restrictive age classification of 16 (V) would be most appropriate. It was apparent that the many and graphic scenes of violence were the primary motivating factors for the decision that the film be assigned a classification of 16. The Chief Examiner stated in his report: "This film has extremely realistic portrayal of close hand to hand combat, gunfights, stabbings, bomb blasts and car chasers. The scenes of violence are sustained, intense and bloody. As the body count increases the highly stylized almost glamourized violence increases in tempo. Bloody and realistic, these scenes are bound to be upsetting and harmful to younger viewers."

- 4) In his written submission, Mr Rosin complained about the terseness of the reasons provided by the examiners. He argued that the guidelines were not interrogated in any detail, and there did not appear to be an accurate and proper application of the facts to the legal principles as laid down in the guidelines. In response, Mr Samuels pointed out that a more detailed report had been prepared, and that the final report was a brief synopsis of the deliberations. The Tribunal has access to all the documents, and it is apparent that the final report was a very brief synopsis of the deliberations of the examiners. The supply of adequate reasons is critical. It justifies the decision of the examiners and enables the applicants to determine whether an appeal should be lodged. The supply of adequate reasons by those exercising public power is indispensable in a constitutional dispensation that is premised, in part, on our being an open and democratic society.
  
- 5) If all the documents submitted by the FPB in this appeal are assessed holistically, then the reasons in this matter become a lot clearer and provide an explanation for the conclusion of the examiners. It is important that the FPB either supply all of the documents to the applicants, or that the synopsis provided amalgamates the material comments and arguments, not just the conclusions contained in the report of the Chief Examiner. This would provide the applicants with a fuller picture, and enable them to make a more informed decision about whether to appeal or to abide by the decision of the examiners.
  
- 6) The applicant argued that film is less about violence and more about action, and that the film has “strong cinematography, powerful direction, excellent use of music and a well-directed cast”. Matt Weston ultimately makes the right choices by releasing the files about the corrupt CIA and other operatives, and this, according to the applicant, ensures that the film ends with a reassuring and positive message. It was also argued that a child between the ages of 13 and 16 would comfortably tolerate this film. In past awards, we distinguished between ‘violence’ and ‘action’. Action is stylised and choreographed, portraying

unrealistic acts sometimes in a fantastical context. In this film, the violence – even though not accompanied by gore or bloodletting – is realistic and gritty. A number of scenes are jarring and are most realistic. We are of the view that the scenes that caused concern cannot be described as ‘action’: they portray violence, and must be assessed as such.

- 7) In his argument, Mr Samuels made comments about the guidelines being akin to a bible and providing guidance to classifiers in “black and white” terms. Mr Rosin took issue with this, submitting that the guidelines are precisely *guidelines*, and should not be elevated beyond being a guide to assist in the exercise of discretion. The guidelines, as the term suggests, are meant to guide and structure the exercise of the discretion of the examiners. In order to ensure consistency, it is important that the guidelines be abided by and applied in a sagacious manner. However, it must be accepted that a ‘13’ classification cannot be deemed to be a hermitically sealed compartment entirely distinct from a ‘16’ classification. There may be films and publications that straddle both categories. For reasons stated later, we are of the opinion that this is not the case in this matter.
  
- 8) As stated in previous awards, the classification to be assigned must be the least restrictive one necessary to protect children in the relevant age group. It must always be borne in mind that, in addition to protecting the freedom of expression of distributors and publishers, one of the objectives of the Act is to protect children from exposure to disturbing and harmful materials and from premature exposure to adult experiences.<sup>1</sup> It is easy to state the proposition in such bald terms, but much more difficult to determine whether a particular film will harm children of a particular age group. It is not particularly difficult to make this decision in respect of material of an extreme nature. It is much more difficult to determine whether a classification of ‘13’ could be harmful to a 14-year-old who watches a scene of violence or is exposed to a sex

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<sup>1</sup> Section 2 of the Films and Publications Act 65 of 1996 (as amended).

scene. The distributors naturally want the least restrictive classification, while child rights activists would obviously prefer more stringent constraints. It may be useful that empirical research conducted both in South Africa and internationally be made accessible, to enable us to exercise our discretion properly in this regard. Having regard to research of this nature will assist us in ensuring that the decisions we make in this context are objectively justifiable, and are not an intuitive reaction based purely on subjective experiences.

### **The appropriate legal classification**

9) It was agreed by all the parties that only one of two classifications was appropriate in this matter. It was agreed that no classification more restrictive than '16' would be appropriate, and neither would it be fitting to assign a classification more lenient than '13'. The debate in the hearing revolved around the appropriateness of these classifications. It was also common cause that none of the other classifiable elements materially impacted on the decision. I now turn to an analysis of the appropriate provisions of the guidelines dealing with violence as a classifiable element.

10) The current guidelines<sup>2</sup> provide that the following scenes of violence would justify a '13' age classification:

There may be brief scenes of realistic but moderate, physical, psychological or verbal violence justified by context, and without focus on the effects of violence on humans or animals or bloody details. Scenes of domestic, racial, religious or sexual violence may be discreetly implied and justified by context. There are no scenes glamorizing, condoning or rewarding violence.

11) It is clear from this provision that scenes of realistic violence may be accommodated within a '13' age classification if:

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<sup>2</sup> *Government Gazette*, 1 September 2009 No 32542.

- The scenes are brief;
- They portray moderate physical, psychological or verbal violence;
- These scenes are justified by the context;
- There is no focus on the effects of violence, and there are no bloody details.
- In addition<sup>3</sup>, scenes of domestic, racial and religious violence may be discreetly implied, but these must be justified by context.
- Finally, there are no scenes glamorising and condoning or rewarding violence.

The drafters of the guidelines obviously intended that, if a film contained scenes of realistic violence, these scenes had to be of brief duration and of moderate impact to be assigned a classification of 13. If the various scenes cannot be described as 'brief', and if the impact journeys beyond what can be described as 'moderate', then the film needs to be given a more restrictive classification than 13.

- 12) There were several scenes of violence in the film. Mr Samuels submitted that, on his count, there were 23 or so incidents of violence. We were not able to verify this, but they were certainly numerous. It is apparent that the requirement of brevity, read with the other requirements, was intended to ensure that what scenes are included are of short duration. The sheer number of scenes involving violence in our opinion points strongly in the direction of a higher classification than 13.
- 13) Importantly, there were a number of scenes that, when assessed individually and cumulatively, may be disturbing and harmful to children under the age of 16. In the water-boarding scenes, the viewers see the material being prepared, the actual water-boarding, and Tobin gasping for breath after the towel is removed. The water-boarding technique is repeated. Similarly disturbing is another torture scene, when Weston attempts to get information from one of the attackers about who was behind the attack.

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<sup>3</sup> These aspects are not relevant for the purposes of this appeal.

- 14) The blood splattering over the windscreen after a person is shot in the head during a car pursuit is realistic and graphic. Tobin is expressionless when he executes people. The killing of the interrogators in the safe-house is graphic and convincing. There are close-ups involving knives and broken glass being brandished menacingly and threateningly. The attack and the killing of Carlos's wife is similarly realistic and clear. The last scene in the second safe house, which ends in a bitter fight between Weston and the housekeeper, is graphic, explicit, and violent. There are close-ups of them struggling, falling through a glass window, being stabbed by the glass, and finally the housekeeper's neck is broken in the struggle. In addition to these repeated scenes of violence, the sound effects throughout accentuate the sense of menace. We hear necks being broken, and often the cameras zoom in on those engaging in the acts of violence. I have referred to these scenes to illustrate the point that the impact of these scenes cannot be described as 'moderate'. That list is not exhaustive of the scenes that we felt could be disturbing and harmful to children under the age of 16.
- 15) After assessing the various scenes, we are of the opinion that the scenes of violence cannot be described as 'moderate'. Thus, because of the number and nature of the various scenes of violence, we are of the opinion that a classification of 13 would not be the appropriate one in the circumstances.
- 16) The classification guidelines in respect of violence for a '16' classification provide that scenes of realistic violence may occur within a meaningful context that is necessary for the development of plot or character. As there are a number of scenes of realistic violence of fairly high impact, we are of the opinion that a restrictive age classification of 16 would be most appropriate legally in this matter.
- 17) It is for these reasons that we affirm the decision of the classification committee.

## **Decision**

**The film *Safe House* is assigned a restrictive age classification of 16 (V).**

Concurred:

Adv. D. Bensusan

Ms H Devraj

Prof. A. Magwaza

Mrs P. Marek

Revd M. McCoy

Ms K. Moodaliyar