

Before the Film and Publication Appeal Tribunal

In the matter between:

SterKinekor Distributors

and

The Film and Publication Board

11/2012

Award

In re:

Appeal against the classification of the film: **Skyfall**.

Professor K Govender

(Chairperson)

Introduction and brief description of the film

- 1) This is one of the major blockbuster films of the year, and is reported to have cost between \$150 million and \$200 million to make. This production marks the 50th anniversary of the Bond franchise, and is the 23rd film in the series. It stars Daniel Craig as James Bond for the third time, while Javier Bardem gives a captivating and enthralling performance as the antagonist Raoul Silva. The main characters are complemented by a strong supporting cast: Judi Dench as M, Ralph Fiennes as Gareth Mallory, Naomie Harris as Eve Moneypenny, and Albert Finney as Kincade.
- 2) The film¹ starts in Turkey with Bond attempting to recover a stolen computer hard drive that contained the names of NATO agents who had infiltrated various terrorist organisations in the world. The opening scene involves a chase through the Grand Bazaar of Istanbul, culminating in a desperate battle between Bond and the hired assassin, Patrice, on the roof of a moving train. Many of the Bond films open with this kind of high intensity action scene.

¹I have drawn on facts that are already in the public domain so as not to give too much away about the film and thus inhibit the enjoyment of those watching the film. See: <http://en.wikipedia.org/wiki/skyfall>.

After receiving an order to take a shot, Eve accidentally shoots Bond, who falls into the vortex and appears to drown.

- 3) MI6 faces considerable pressure from the politicians over the loss of the hard drive, and the future of M and of MI6 is in question as M is subjected to criticism over her handling of the crisis. A bombing of the offices of MI6 results in the death of six operatives and in the destruction of their facilities. A dishevelled and somewhat fatigued Bond, who has survived the shooting and near-drowning, re-appears to take up the cudgels on behalf of M16. Bond is re-instated and seeks to discover who is behind the attacks on MI6. The main antagonist is Raoul Silva: he harbours a hatred for M, whom he holds responsible for giving him up to the Chinese. The cyanide tablet that he digested in an attempt to kill himself after his arrest has left him badly deformed. He holds M and MI6 responsible for what has occurred to him. He plans his revenge meticulously, even allowing himself to be captured, and then escapes and causes mayhem at Charing Cross station. The finale occurs in a remote part of Scotland near Bond's home at Skyfall, where a determined Silva and Bond clash amidst a cacophony of explosions, gun fire, and killing. The cinematography is spectacular; particularly memorable was a choreographed fight scene in Shanghai with the lights dancing in the background, and the last segment involving a brooding depiction of the Scottish country side. Filming occurred in Turkey, Shanghai, and Britain.

An assessment of the various arguments

- 4) A three-person classification committee comprising Ms M Dobrovic, Mr A Qodashe, and Mr K Kgole viewed the film on the 24th of October 2012, and by a majority assigned the film a restrictive age classification of 16(V). Ms Dobrovic and Mr Qodashe were of the view that the film warranted the higher classification of 16(V), while Mr Kgole was of the opinion that, given the genre of the film, a classification of 13 would be appropriate and adequate. It is apparent to us that the classification committee carefully considered their decision and comprehensively detailed their reasons for the various conclusions reached. We are appreciative to them for their written and oral presentations, which assisted us in coming to our conclusion.
- 5) At the Appeal Tribunal hearing on the 10th of November 2012, the appellant was represented by Mr Yugandran Naidoo, the business analyst and classification manager of

Ster-Kinekor, while the respondent was represented by MsDobrovic, one of the classifiers in this matter. The main concern of the majority of classifiers was that the film had a strong overall impact with complex themes, and contained frequent scenes of realistic physical, verbal, and psychological violence with bloody detail. They also pointed out that the other classifiable elements of drugs and sexual activity could be deemed to be mild, modest, or strong. They concluded that the complex themes and the frequency of the violence might be harmful and distressing to children between the ages of 13 and 16; hence their decision to assign the film a classification of 16. MrKgole sought in his reasoning to place the scenes of violence within the context of the genre of Bond films, and took the view that much of it was choreographed and highly stylised. This did not appear to weigh heavily in the determination of the majority.

- 6) MrNaidoo, on behalf of the appellant, pointed out that the Bond series deals with a fictional secret service character, and that "Skyfall" is not materially different from its recent predecessors. He argued that the last two Bond films had received classifications of '13', and submitted that a classification of '16' would be the most restrictive assigned to the film in any English-speaking country. By way of comparison, he pointed out that the film had received a 'PG 13' classification in the USA and a '12A' classification in the UK; and in Sweden, on appeal, the original classification of '15' was reduced to '11'.
- 7) MrNaidoo focused on the positive messages and themes of the film, and argued that these would have a strong impact on those aged 13 to 16, who are amongst the target market of this film. He emphasised the themes of pride in country and patriotism, the need to be accountable, the consequences of poor judgment, and the results of making hasty decisions, and that the abuse of power is morally and ethically wrong. He drew our attention to the sense of humour that permeates some of the scenes, and submitted that humour – part of the Bond tradition – accentuates the somewhat fantastical nature of the film. He contended that a '13' classification would be most appropriate in these circumstances.

Finding and conclusion

- 8) The new classification guidelines were promulgated on the 8th of October 2012², and this decision was made by the classification committee on the 24th of October 2012. It is

²Government Gazette No. 35765 of 8 October 2012, No. 804.

common cause that the 2009 guidelines were used by all the parties in this matter, understandably so. In order to be fair, we attempted to reconcile both sets of guidelines and to reach a decision that accords with both the 2009 and the 2012 guidelines. It must be emphasised that the 2012 guidelines, having been brought into effect, must be read together with the FPB Act to classify films, publications, and games.

9) It has been emphasised that classification decisions must be made having regard to the impact of the classifiable elements within the context of the film.³In our previous awards⁴, we underscored the importance of assessing films or publications in context, as an uncontextual approach could render outcomes and conclusions that are very different from those arrived at after a contextual analysis. The context provides the prism through which the various scenes should be assessed. This approach finds further manifestation in the 2012 guidelines. Section 3, which deals with guiding principles, provides:

- (1) All classification decisions must consider the context, impact and release format of material.
- (2) The context in which the classifiable element is present determines the acceptability thereof within the relevant category. When considering context, the following factors may be taken into account:
 - (a) The expectation of the public in general and the target market of the material.
 - (b) The theme of the material;
 - (c) The manner in which the issue is presented;
 - (d) The literary, artistic, dramatic or educational merit of the film;
 - (e) The apparent intention of the filmmaker, as reflected in its effect.

The guiding principles then go on to state that the impact of the classifiable elements is used to determine the appropriate classification. It is apparent that in terms of the 2012 guidelines, regard must be had to a triad of assessments: context, impact, and the release format of the material. It is the cumulative assessment of all three categories that will result in a fair and appropriate outcome. This approach is not materially dissimilar from the approach that was previously adopted under the 2009 guidelines.

10) The James Bond genre is one of the most enduring of its kind, and has prospered for more than fifty years. In its essence it is a story about a suave and debonair English spy,

³ Paragraph 3.3 of the 2009 guidelines – *Government Gazette* No 32542 of 1 September 2009.

⁴ See appeals in *Hustler* 4/2012; *XXY* 01/2009; *Hunter Games* 5/2012.

personifying some aspects of that culture, who battles memorable villains and who, despite overwhelming and seemingly impossible odds, prevails in the end and emerges to film another day. This genre' is about fantasy, fabulous gadgets, spectacular special effects and stunts, and great entertainment. The first segment in which Bond and Patrice battle on the roof of a speeding train is not dissimilar from the opening of other Bond films. It is clearly impossible for persons to fight and maintain their balance, let alone to drive a pay loader along the roof of the train and then use that machine to connect the various carriages to enable Bond to jump from one carriage to the next. It serves to remind the viewer that this is a Bond film and that, true to its genre, it is unrealistic but grippingly entertaining. Similarly, the final scene at Skyfall, when Bond and Kincaid attempt to use whatever resources they have at their disposal, smacks of a MacGyver or A Team-type adventure in which the protagonists make do with whatever is available to repel attack. Humour is also a characteristic of the Bond films – James Bond ensuring that his suit is appropriately adjusted and that his sunglasses are perched just right despite facing the menace of the villains, and his penchant for unforgettable one-liners such as “Put it in the red”. It is quite apparent that the purpose of the filmmakers is to entertain the audience, and this film is not markedly different from the other recent Bond films. It appears to us that the majority did not afford adequate weight to the context, to the fact that this is a Bond film, and that it therefore would be perceived as being somewhat unrealistic and of a unique genre.

11) In our assessment, there were no scenes of drug-taking, and the sex scenes were not just infrequent, but mild and merely suggestive. They were not of a nature that justified a classification of 16.

12) It was clearly the scenes of violence that caused the most concern. However, we are satisfied that this is not a violent film. Violence is described as “any physical, psychological or verbal abuse whether self-inflicted, interpersonal or collective...”⁵. The explicitness of the portrayal of the violence and its consequences and effect will have a direct bearing on the classification assigned. If scenes anticipate impending violence, but the violence is not actually portrayed – or if the aftermath of the violence, without bloody detail, is depicted – then different considerations apply. Filming techniques are used to convey the message that violence has occurred or about to occur without depicting the violence itself. If the violence is not explicit, or if the consequences of the violence are not clearly portrayed, and there is

⁵The definition section of the 2012 Guidelines.

no gore and blood, then these scenes must be assessed in the light of the context of the film as a whole before a determination is made. The car chases and explosions are part of the Bond genre, are present in almost all the Bond films, and are expected to occur by its legions of fans. Falling into this category would be the Aston Martin being pummelled with bullets, and the exploding gas canisters that ultimately destroy the home at Skyfall. It would be incorrect to describe these scenes as violent.

13) Some of the car chase scenes could be criticised for encouraging reckless and anti-social driving behavior; but mitigating this is the obviously unrealistic context in which these scenes are played out.

14) Some of the scenes that caused us some concern were:

- The distorted and deformed face of Silva. However after the portrayal of the severely deformed features, his facial features are immediately restored by the inserts that he places in his mouth to support his jaw. The full impact is mitigated by the improbability of this occurring.
- Patrice falling off the skyscraper. This scene is preceded by a highly stylised fight between Bond and Patrice, with the former attempting to save the latter from falling to his death. The fall is dramatic, but no gore or blood is shown.
- The execution of Severine. Again, we do not witness the actual killing, and the viewer has to surmise from the subsequent scenes that she was executed by Silva.
- Bond involved in a desperate fight with the villain and breaking his neck in the water. Again the scene is brief, and there is no depiction of the aftermath except for the bubbles emerging from the mouth of the deceased.
- The shooting at the hearings of the ministerial oversight committee. People are shot; but M survives, and there is no portrayal of the bloody aftermath of the violence. This scene serves to demonstrate the long reach of those seeking to harm the democratic order, and does not portray gratuitous violence.
- One of the antagonists being knifed in the back. No gore was shown, and the scene was brief and fleeting.
- The threat to M at the end by Silva who urges her to kill both of them. While there is menace, the scene ends on a reasonably positive note.

We were satisfied that very little blood and gore is displayed. In the first scene, we see fallen agents who have clearly been shot. But there is no focus on the gore; the scenes depicting blood are brief and fleeting, and this was clearly the intent of the filmmakers.

15) It was common cause that the only applicable classifications were either a restrictive age classification of '13' or one of '16'. The overall objective of the classification process to the extent relevant to this appeal is to protect children from exposure to disturbing and harmful material.⁶ It would appear to us to be unduly restrictive to prevent a child aged 15 from seeing this film. It is not materially different from the other Bond movies of recent vintage such as *Casino Royale*. We are of the opinion that the sex scenes were less risqué and the violence less graphic than in the predecessors.

16) This film has received positive acclaim from reviewers, with Rotten Tomatoes giving it a 92% approval rating based on 222 reviews, and Metacritic giving it 81% based on 43 reviews.⁷ Writing in the *Times*, Kate Muir has described this as a “triumphant return to classic Bond”, and is of the view that this will go down as “one of 007’s best”.⁸ We thus have a spectacular Bond film that is true to its genre, but that contains some scenes that cause concern. It is important to have regard to the context and genre, and to determine whether the scenes would be disturbing and harmful to children. In our award in *Footloose*⁹ we stated:

We were of the view that it would be inappropriate to assign a very entertaining film bearing positive messages for young people, a restrictive age classification of 13 because of isolated scenes that may be beyond mild, but were certainly by no means violent. In addition this particular scene may also convey important lessons and we are of the view that it and the other scenes that we considered would not be disturbing and harmful to children. We are of the view that the positive features of the film were such that it justified us assigning a less restrictive classification. The guidelines list a number of classifiable elements and it is apparent that the cumulative impact of the various scenes should be considered in determining the appropriate classification of the film. The test is whether the intensity and frequency of the classifiable element is such that it could be disturbing or harmful to children of a particular age group or prematurely expose them to adult experiences. Importantly this

⁶Section 2 of the FPB Act.

⁷These figures were obtained from <http://en.wikipedia.org/wiki/skyfall>.

⁸<http://en.wikipedia.org/wiki/skyfall> at 8 of 9.

⁹Footloose 5/2011.

assessment must be a contextual one having regard to the positive or redeeming features of the film.

We are comfortable that the scenes, when assessed in the context of a James Bond film, can be described as moderate impact violence that is justified by context.¹⁰ In terms of the guidelines, this would justify assigning the film a restrictive age classification of 13. Our view is that a 13-year-old will generally be familiar with the Bond franchise and will assess the various scenes through the prism of the fantasy that is characteristic of the Bond films. We have, in the past, indicated that we are not a homogenous society, and that there are challenges in determining how 13-year-olds think and react. In this case we reach these conclusions on the information before us; but we would be greatly assisted by detailed research on the effects of particular classifiable elements on children of different ages and from different communities..

17) As stated earlier, it would be unduly restrictive not to allow a fifteen-year-old to view this film. Its intensity and impact is similar to that of its predecessors. We are fortified in our opinion by the critical acclaim that this film has received, and by the fact that generally English-speaking countries have assigned this film a classification of '13' or lower. This is a film of high entertainment value, and the scenes that caused us concern can, in our opinion, be described as being of moderate impact. In our view, having regard to the genre and context, and after analysing the various scenes, we are of the view that it is appropriate to assign the film "Skyfall" a restrictive age classification of 13.

Dated at Durban on the 14th of November 2012

Concurred by

Adv. D Bensusan

Ms H Devraj

Prof. A Magwaza

Ms Penny Marek

Ms D Terblanche

¹⁰Paragraph 15 of the 2012 guidelines.