

Before the Film and Publication Review Board

In re:

Appeal by Nu Metro Distributions against the classification of 10 (V) in respect of the film "Musketeer".

Award

Professor K. Govender (Chairperson)

Introduction and background

This is a decision of the Film and Publication Review Board constituted in terms of the Films and Publications Act 65 of 1996, as amended.

The examiners appointed in terms of the Act classified this film '10(V)'. The following were submitted as reasons justifying the decision:

1. Scenes of sword fighting throughout the film, as well as other forms of violence prominent in war and in situations where rivals fight (gun shots).
2. Continuous scenes of realistic violence within the context of the story.

3. Sword fighting scenes mild to strong, but within the context of the period of 17th century France.
4. Infrequent use of strong language.
5. Brief nudity.
6. Viewers aged 10 and over will be able to understand that the frequency of violence is part of the story of good struggling to conquer evil and restore order.

Ms Celia Fanga of Nu Metro submitted the following reasons for launching the appeal:

It is our belief that a 10V for this title is far too strong a rating for the target market which is 5 to 14 years old.

The arguments

The Review Board met at Nu Metro's Gallo House in Rosebank on Thursday 1-11-2001. The Board viewed the film, and thereafter heard representations from Mr Iyavar Chetty of the FPB and Mr Mark Pierotti of Nu Metro. Mr Pierotti asserted that the primary target market was between the ages of 5 and 14, as this film would not appeal to teenagers. The present rating, he asserted, would destroy the box office potential for this film. He argued that this was a swashbuckling type of film with no overt violence, and that there were no gory scenes. He offered the view that a teenager would be bored by a film of this nature, and suggested that an appropriate rating would be 'PG'.

Mr Chetty, on behalf of the FPB, argued that impact on box office revenue is not a factor to be taken into account in determining a classification. Further, he stated that referring to the ratings given to other films is not helpful. He argued that these decisions are made by examiners, and that the Review Board should not disturb their decisions unless it is satisfied that the examiners erred in arriving at their conclusion. Mr Chetty indicated that examiners start from the premise that there should be an 'A' classification, and thereafter

they adjust the ratings to suit the film under consideration. In response to a question from the Board, he stated that if there was one scene which justified a '10V' classification, then that would be the most appropriate classification.

Findings and conclusions

The Board is an administrative appeal tribunal. Its powers are contained in section 20 (3) of the Act:

The Review Board may refuse the appeal and confirm the decision in question, or allow the appeal, either wholly or in part, and give such decision as the Board or the executive committee should in its view have given, and amend the classification of the publication or film ..., and may impose other conditions in respect of the distribution or exhibition of the publication or film: Provided that the classification, as so amended, and the conditions so imposed, shall not be more restrictive than the classification or condition appealed against.

Section 20(5) provides:

A decision of the Review Board shall for the purposes of this Act be deemed to be a decision of the Board.

It is our view that the Review Board is required by the subsection to make a determination as to the correct classification or rating for the film or publication. It must view the film and/or consider and reflect on the publication, and determine what would be an appropriate classification in terms of the classification guidelines, after hearing representations. The proceedings before the Board are conducted *de novo*, with the understanding that the Board will come to its own decision on the merits. This will be in keeping with the spirit and letter of the Act. An administrative appeal tribunal is not meant to be a court exercising purely review powers. It is meant to be a forum to which persons can appeal in the belief

that the matter will be considered afresh. One of the important advantages of administrative appeal tribunals is that they foster confidence in the administrative process, as an affected person is able to have a decision considered by an independent second decision-maker.

However, the powers of the Board are restricted to affirming the decision of the examiners or substituting their decision with a more lenient classification. It is difficult to fathom the logic behind this restriction. It is important to note that there is no such restriction in respect of an appeal to the High Court.

Our finding is that the Review Board should make a determination as to the correct classification. If the classification is less restrictive, then it must substitute its decision for that of the examiners. If, on the other hand, the classification decided upon by the Board is more restrictive than that agreed upon by the examiners, the Board is restricted to affirming the decision of the examiners. However, it may be prudent, if the Board is of the view that the classification is unduly lenient, to state so with reasons.

In terms of Section 20 of the Act, appeals from a decision of a classification committee lie only with the Review Board, and not another classification committee.

We now turn to the merits of the matter.

The crisp issue before us is whether 'PG' or '10(V)' is the appropriate classification for the film *The Musketeer*. The main concerns centre on the use of violence in the film.

In respect of the 'PG' classification, the guidelines regarding violence state:

Brief scenes of minimal violence may occur. There are no prolonged or extreme images of violence ... Scenes of moderate violence occur only in clearly contextualised comic, historical, fantastical or natural disaster settings.

In respect of a '10' classification, the guidelines regarding violence provide:

Violent scenes may occur. These do not last long and are neither graphic nor gory. They take place in the context of the story. Violence is not shown as glamorous. Its consequences are clear. Where threat, menace or suspense occurs, it will not be disturbing to children of 10 years.

In respect of 'PG', the violent content must be minimal and inconsequential, and not be of concern to young children. Moderate violence would be permissible under a 'PG' rating only if it is within the context of a comic, historical, fantastical, and natural disaster setting. The reason for this is that children would be able to recognise the context and feel unthreatened. We were of the opinion that the sword fighting scenes were choreographed, and were action as opposed to violent scenes. Many of the scenes, such as those with the barrels and the ladders, appeared to be humorous rather than violent. However, there were scenes that could cause concern to young children and were outside the parameters of the guidelines on violence for 'PG'. The following are some illustrations of these:

1. The killing of D'Artagnan's family, specifically his father.
2. The attempted indecent sexual assault of Constance, and her reply, "If you ever do that, I will slice your balls off and feed them to the pigs."
3. The act of Febre in holding a knife to the throat of a young child and threatening to kill her in order to elicit co-operation from the queen.

Comment [MJM1]: According to www.imdb.com, there is no character by this name. Should it be Francesca?

These scenes cannot be described as depicting minimal violence. and are not moderate violence as defined in the guidelines for a 'PG' classification. Some of these scenes would be uncomfortable to very young children. Our view is that, given some of the scenes, the most appropriate classification would be 10(V). This would mean that children under this age would not be legally permitted to view this film. This is the view of the majority of the members of the Review Board.

Mr Andrew Verster was of the opinion that the film, looked at holistically, would not be of concern to children, and was comfortable with a 'PG' classification.

Rules regarding appeals to the Board

We have decided that, in the absence of formal rules regulating the functioning of the Review Board, we should provide some information as to how future appeals should be processed.

Any person (hereinafter referred to as 'the appellant') entitled to appeal against a decision must be supplied with reasons for the decision. The appellant must be informed that if he/she/it wishes to appeal, a memorandum of appeal must be submitted to the Film & Publication Board (FPB) together with the application. The memorandum of appeal must, with reference to the guidelines, provide full reasons for the conclusion that the classification decided upon is incorrect. The memorandum must indicate what, in the opinion of the appellant, the correct classification should be. This conclusion must be supported by argument and reasons. The appellants must be notified that full and complete arguments must be submitted in writing.

The FPB must prepare a written response in support of the classification, and deal with the arguments submitted by the appellant/s. The response of the FPB must be served on the appellant. The appellant must be given an opportunity to respond to the submissions of the FPB. In cases of urgency, the FPB's attention is drawn to Section 20(2), which empowers the Review Board Chairperson, if good cause is shown, to suspend the decision until the decision is given on appeal.

The memorandum of appeal and the FPB's response must be served on each of the members of the Review Board at least three days before the hearing of the matter. Parties must also be informed of their right to be represented at the hearing. The necessary

administrative assistance must be provided to the Chairperson to carry out the functions listed in Section 20(2) of the Act.

Concurred by:

Adv. Ronald Lessick

Ms Penny Marek

Revd Mike McCoy

Ms Rene Smith

Mr Andrew Verster

Dated: 1st November 2001