

Before the Film and Publication Appeal Tribunal

In the matter between:

Nu Metro

and

The Film and Publication Board

12/2012

Award.

The Hobbit – An Unexpected Journey

Professor Karthy Govender

Background and description of the film

1. The famed English author of children's books, JRR Tolkien, wrote the enduringly popular fantasy novel *The Hobbit, or There and Back Again* in September 1937.¹ The book, one of the most successful children's novels, and popularly referred to as *The Hobbit*, was a prequel to *The Lord of the Rings*, which has already been adapted into a trilogy of films.
2. *The Hobbit – The Unexpected Journey* is the first of a proposed trilogy of films by director Peter Jackson that seeks to bring to life the fantasy world of Tolkien's Wilderland as depicted in the earlier novel. The film is monumental in scope and is spectacularly entertaining. The novel opens with the famous line, "In a hole in the ground there lived a hobbit", and this signals the start of a tremendous adventure in the minds of millions of children throughout the world. The book and its successors have been described as "a literary phenomenon, an

¹ http://wikipedia.org/wiki/the_hobbit.

alternative religion, an endless invitation to exegesis”². They invite readers and viewers to join in the adventure that is part of an epic journey to reclaim the homeland of the dwarves.

3. The film begins with an older Bilbo Baggins telling the story of how the once-prosperous city of Erebor, run by a dwarf king who develops an unhealthy pre-occupation with gold, is attacked by fire-breathing dragons. The dwarves are expelled from the homeland and go into exile. Bilbo Baggins is persuaded by the wizard Gandalf the Grey to leave his comfortable, complacent, and stress-free idyllic life in the Shires of Merrie England and embark on a pulsating adventure with thirteen dwarves to wrench the city on the Lonely Mountain from the dragon Smaug. The film tracks the journey of the intrepid band of dwarf warriors led by Thorin Oakenshield, the grandson of the deposed king, and who include Bilbo Baggins – who gradually discovers characteristics of courage and fortitude that even he did not think that he possessed. Initially Bilbo Baggins is tempted by a promise of the share of the treasure under the control of the dragon; but later he becomes inspired by the noble goal of restoring the dwarves to their homeland. The film is clearly divided into various episodes that deal with different adventures involving a variety of creatures such as orcs, elves, wargs, trolls, and giant eagles. Thrown into the mix are an epic heavyweight duel between mountain-sized rock figures, the wizardry of Gandalf, a ring that enables the person wearing it to disappear, a beautiful elfish queen who does not age, and an assortment of other memorable characters such as sprinting squirrels.
4. In addition, help is rendered to the protagonists by characters with similar interests and objectives. The protagonists are able to survive many adventures unscathed, and the film ends as they are on the verge of yet another adventure: the dragon begins to stir in its lair of gold. The film is, without doubt, one of the big budget blockbuster films of 2012, and features a number of stars such as Sir Ian McKellen, Martin Freeman, Cate Blanchett, Hugo Weaving, and others.

An assessment of the arguments

5. On 6 December 2012, a three-person classification committee decided by a majority vote to assign the film a restrictive age classification of '13 (V)'. The majority were particularly concerned about the mature and complex nature of the themes, such as power, war, land

² . Philip French: Review of 'The Hobbit: An Unexpected Journey', *The Observer*, Sunday 16 December 2012. <http://www.guardian.co.uk/film/2012>.

restitution, solidarity, courage, and loyalty. As noted in the final report of the Chief Classifier, the majority were concerned that these themes could be distressing and misleading for children under the age of 13, and could encourage anti-social behavior. They also referred to the scenes of violence, which they characterised as of moderate impact, frequent, and intense. In the view of the majority, the violence was both realistic and fantastical, and was both physical and psychological. The minority report emphasised that this was a fairy tale adventure containing scenes of mild to moderate violence. This report emphasised the unrealistic nature of the violence, the context, and the lack of gore and blood being depicted. In the circumstances, Mr Moses Molekane (the classifier who was in the minority) decided that '10-12PG'³ would be an appropriate classification in these circumstances.

6. At the hearing on 21 December 2012, the FPB was represented by Ms B Masilabele (chief classifier in the matter), and the applicant was represented by Mr Mark Rosin of the firm of attorneys, Rosin, Wright and Rosengarten. We are grateful for the written submissions made by both parties, and for their being present and making oral representations at short notice during the holiday period.
7. Mr Rosin contended for a 10(V) classification, and argued that the classifiers had erred in assigning the film a classification of 13. He submitted that the film, which was spectacularly directed and filmed, epitomises epic fantasy story-telling. He argued that, in terms of the scenes of violence, the film was similar to many films of the same genre such as *The Lord of the Rings* trilogy and the *Harry Potter* series. As a prequel to the three-part *The Lord of the Rings* trilogy, *The Hobbit – An Unexpected Journey* is the first part of a new trilogy of films that deal with fantasy. He contended that there is a tonal similarity between this film and *The Lord of the Rings'* trilogy. In the submission of the applicant, unusual characters such as orcs and wargs will be tolerated by children of the age of 10. He emphasised that the test was one of tolerance and not of taste.
8. In her written submissions, Ms Masilabele emphasized the majority classifiers' dual concerns about complicated themes that may be distressing, and scenes of violence that – she submitted – permeated a large proportion of the film. She also submitted that children

³ "'10-12PG' means the material is not suitable for children under the age of 10. A parent or care giver may decide if the material is appropriate for children in their care from the ages of 10 to 12, if it is of particular entertainment or educational value for. Children from the ages of 10 to 12 years of age may not be allowed to watch a film classified 10-12PG unless accompanied by an adult." FPB Classification Guidelines, paragraph 6 (2) (vi), *Government Gazette* No. 35765, 8 October 2012.

under the age of 13 may not be cognitively developed enough to understand the distinction between fantasy and reality. (Our view, however, is that children are able to distinguish between fantasy and reality at a much earlier age than 13.) She also referred specifically to a number of scenes of violence that caused them concern. We shall deal with these later in this award. Ms Masilabele submitted that sensitive children may be upset by the film and by the psychological fear of the dwarves being constantly hunted down. After some equivocation, she accepted that the violence in the film could not be characterised as gratuitous.

Reasons for our conclusion

9. After viewing the film, hearing the oral presentations by the parties, and considering the written submissions made, the Appeal Tribunal decided unanimously to assign the film a restrictive age classification of '10-12 PG (V)' and as a consequence to set aside the decision of the classification committee. A formal notification of the decision was handed down, and the parties were informed that reasons would be forthcoming in two weeks. These are the reasons of the Appeal Tribunal.
10. The first issue that we consider is the concern expressed about the themes. The classification committee, in its written submissions, refers to the themes in the film as "complex and mature", and then identifies these as the focus on power, land restitution, solidarity, courage, and loyalty. Themes are relevant if they are disturbing, harmful, upsetting, or inappropriate for children. We are unable to determine why themes that deal with the determination to return to one's homeland, or with solidarity, courage, and loyalty would be upsetting, disturbing, or harmful to children. On the contrary, themes of courage and loyalty may inspire and be positively beneficial to children.
11. We are of the view that the classification committee erred in taking the view that complex issues, no matter what they are, may be disturbing, harmful, upsetting, or age-inappropriate to children. The enquiry in this regard is not simply to identify themes such as solidarity, courage, and loyalty and then to conclude that, because they are complex, they may be harmful, disturbing, or age-inappropriate to children. Bilbo initially becomes interested in joining the adventure because of a promise of a share of the treasure; but later he recommits himself to the cause of assisting the dwarves in order to enable them to return to their home. He comes to this understanding by appreciating why the idyllic surroundings of

the Shires are so important to him: they are his home. Likewise, the kingdom of Erebor is the home of the dwarves, and they simply want to return to their home. Bilbo then engages much more meaningfully in the endeavour and is much less of a reluctant participant in the adventure than he was initially. This may be a complex theme; but far from being harmful, it is beneficial and inspiring. We are of the view that the themes of courage, loyalty, and striving to get back what is rightfully yours and from which you have been violently ejected are themes that are not disturbing, harmful, or age-inappropriate to children. It is equally clear that the book was written both to entertain and to inspire children.

12. In this context, in its review of the film, the *Observer* newspaper⁴ highlights the relationship between Bilbo, Gandalf and Thorin and the impact of this relationship on children, and states:

At the centre of the film, and sensitively handled by Jackson, are the relationships between Bilbo, his gruff mentor Gandalf and his antagonist Thorin, and it's something children will respond to. In his book *Anatomy of Criticism*, the Canadian literary theorist Herman Northrop Frye makes a distinction between 'high mimetic' and 'low mimetic' figures, i.e. heroes who are mythically and socially superior to ordinary people or at the same human level as the rest of us. Gandalf, who teaches Bilbo what heroism is, and Thorin, who exhibits the necessary qualities in his actions, are high mimetic figures, while Bilbo is low mimetic. Bilbo can become a hero and then return to his former world, as indeed is suggested at the beginning of *The Hobbit*. What we see in Martin Freeman's moving and endearing performance is Bilbo doing just that.

13. We respectfully agree with these sentiments. Children will identify with Bilbo and see the possibility of mimicking his growth in courage and loyalty; and this cannot be a bad thing. He grows in nobility of both thought and action as the film progresses. Thus in our view the underlying themes of the film are positive and reaffirming for children, which is why we are of the opinion that the classification committee erred in taking the view that the themes would be harmful and could potentially lead to anti-social behavior and conduct. Properly understood, the themes of the film are much more likely to led to the very opposite. Tolkien

⁴ Philip French: Review of 'The Hobbit : An Unexpected Journey', *The Observer*, Sunday 16 December 2012. <http://www.guardian.co.uk/film/2012>.

clearly intended his book to have strong moral messages for children; and the film faithfully communicates this.

14. We now turn to the second main concern underpinning the majority decision of the classification committee, which was that the scenes of violence in the film could be disturbing and harmful to children. As indicated earlier, Ms Masilabele accepted that the violence could not be described as gratuitous. However, she pointed out that scenes of both realistic and fantastical violence were shown in the film. She also pointed out that “the viewer is bombarded with approximately 1 hour of content containing violence of moderate impact in the film”.⁵ Of particular concern to the classification committee were the following scenes:

- Destruction of the dwarves and the display of dead bodies
- The beheading of the king and his head being held high as a trophy
- The challenges faced by the dwarves as they are hunted captured and tortured
- The barbecuing of the dwarves by the trolls, and their being chased by the orcs and by the wolves
- The amputation of the arm of the Orc leader
- The goblin’s stomach being slashed
- An orc being incinerated
- Various scenes of punching and stabbing.

15. It was common cause that there was no depiction of blood or gore in any of the scenes. There was also no explicit focus on the consequences or the aftermath of the violence. It is therefore of central importance that the various scenes of concern be considered in the light of the context. In our award in *Skyfall*⁶, we stated the following:

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.⁷ In our previous awards⁸, 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.

⁵ Page 2 of the written submissions made by the Classification Committee.

⁶ Appeal in respect of the film, *Skyfall* 11/2012 [Karthi, this reference doesn’t look right] Film and Publication Appeal Tribunal.

⁷ Paragraph 3.3 of the 2009 guidelines – *Government Gazette* No 32542 of 1 September 2009.

⁸ See appeals in *Hustler* 4/2012; *XXY* 01/2009; *Hunter Games* 5/2012.

- (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.

16. It appears to us that the Classification Committee took inadequate cognisance of the context of the film as explained. This film belongs to the genre of fantastical films that deal with magic, hobbits, dwarfs, wizards, disappearing people, an assortment of characters, and an evil fire-breathing dragon. It is based on a novel that has entertained children for generations. In addition, the first segment unequivocally communicates that it is a story being told by Bilbo of events that happened almost 60 years earlier. The fact that this is story-telling must mitigate the effects of some of the scenes that have caused concern. Further, given its clear link to and association with the *Lord of the Rings* trilogy, it must be assessed as a film in which fantasy and imagination are dominant. Many of those who watch the film would have read the book, and others may be familiar with either the *Lord of the Rings* trilogy of films or the books on which those films are based. The episodic encounters with the various characters, the daring escapes, and the close brushes with harm will probably be expected and anticipated by the viewing public.

17. There is a suggestion that that significant parts of the film focus on scenes of violence. This, in our opinion, is not accurate. There is much humour in the film, as typified in the scene when the dwarves visit Bilbo; and there are also scenes of spectacular beauty. The Shire is an epitome of tranquility and beauty, reminiscent of the paintings of Constable; and the physical environment becomes grey and more brooding as the band make their way towards the Lonely Mountain. Importantly, several scenes convey messages that are most positive. Gandalf conveys the sage advice to Bilbo Baggins that true courage is not about taking a life but knowing when to spare one. This message is accentuated in the scene

involving Gollum, when Baggins – clearly reflecting on that advice – spares Gollum’s life. Violence is neither glorified nor glamourised, as the dwarves resort to violence only to protect themselves and to regain what was violently taken from them.

18. In our award in *Skyfall*, we dealt with films that have some scenes that may cause concern, but that have other redeeming qualities. We stated:

Violence is described as “any physical, psychological or verbal abuse whether self-inflicted, interpersonal or collective...”⁹. 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 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.

These sentiments apply with equal force to this film. The violence is neither graphic nor explicit, and filming techniques are used to convey the message that there has been a devastating attack – as in the early scene involving the killing of the dwarves when their kingdom is initially overrun. The viewer knows that the story is being narrated, watches the gallant attempts by the dwarves to defend their kingdom, and then witnesses their defeat and the beheading of their king without gore or blood being explicitly displayed. This scene involves much sword fighting, but focuses very little on the actual act of violence. The beheading of the king and his head being held up as a trophy portray the vindictiveness of the dragons, and serve to justify the epic journey to regain the homeland.

19. The barbecuing of the dwarves is presented in a comic fashion. The trolls have strong British regional accents, and appear to be less bright than the dwarves. No discomfort is shown at any stage. When watching the scene, the clear impression is that, while the dwarves are in a tight spot, they have enough ingenuity to make good their escape. The other scenes – those when the orc leader’s arm is amputated, the goblin’s stomach is slashed, and the orc is incinerated by Gandalf – are conceded by all the parties to be a fantastical portrayal of violence. These scenes are clearly unrealistic, and will not cause harm or distress to children.

⁹ The definition section of the 2012 Guidelines, *Government Gazette* No. 35765, 8 October 2012.

20. Ms Masilabele referred in her submissions to the possibility that these scenes would be disturbing and harmful to sensitive viewers. This is not the correct test. The classification assigned to a film cannot be based on what a sensitive child or a fastidious adult would find tolerable, but rather on what a typical child of that age could tolerate. We acknowledge that, in a heterogeneous society such as ours, it may be a challenge to make this determination. However, the use of consumer advisories will serve to give parents enough information to make informed decisions. The classification categories under the 2012 guidelines¹⁰ afford examiners more discretion and greater flexibility. Cognisance must, in these circumstances, be taken of the new categories, such as 7-9PG and 10-12PG, which provide a restrictive age classification but allow children above that age to be admitted provided that they are accompanied by an adult. Classifiers cannot deny a typical child the opportunity to see this film simply because a sensitive child of the same age group may be offended or may find some of the scenes intolerable.
21. The minority report considered the context much more carefully than that of the majority, and correctly assessed the various scenes through the prism of the context and the impact of the film.
22. We were concerned with the menace and the heightened sense of suspense and fear inherent in the scene where the wargs (wolf-like creatures) attack the dwarves with fangs bared, in a determined effort to harm them seriously. Our view was that, judged in the context of the film as a whole, the reassuring presence of adults would reduce any fear or apprehension caused by this particular scene.
23. After assessing the various scenes that caused concern, assessed within the context of fantastical film meant to entertain children, we conclude that a classification of '10-12PG (V)' is justified. In terms of this classification, the distribution, exhibition, sale, or hire to children under the age of 10 years is prohibited. Children aged from 10 to 12 years are only allowed to watch the film if accompanied by an adult.
24. We viewed the film in its normal ('2D') version, and assigned this classification to that version of the film. After the hearing, representations were made to the FPB about extending the classification to 3D versions of the film. We deal with this issue in a separate award.

¹⁰ *Government Gazette* No. 35765, 8 October 2012.

In the circumstances, the following order is made:

Order:

1. The decision of the FPB made on 6 December 2012 that the film *The Hobbit – An Unexpected Journey* be assigned a classification of '13 (V)' is set aside.
2. The film *The Hobbit – An Unexpected Journey* is assigned a classification of '10-12PG (V)'.
3. In terms of this classification, the distribution, exhibition, sale, or hire to children under the age of 10 years is prohibited. Children aged from 10 to 12 years are only allowed to watch the film if accompanied by an adult.
4. This film was neither viewed nor assessed in 3D format, and this classification therefore applies to the normal ('2D') format of the film.
5. After considering representations received from the applicant, the classification of 10-12PG(V) was extended to the 3D version of the film. Our reasons for doing so are contained in a separate award.

Dated at Durban on the 26th of December 2012.

Concurred by:

Adv. D. Bensusan

Prof. A. Magwaza

Ms P. Marek

Revd M. McCoy

Ms D. Terblanche