

# **Before the Film and Publication Review Board**

**Held in Johannesburg**

**3/2008**

**In the matter between:**

**NuMetro**

**and**

**The Film and Publication Board**

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*In re: Appeal in respect of the Film: The Dark Knight.*

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**Professor K. Govender**

## **Introduction**

- 1) This is a sequel to *Batman Begins*, and is a riveting recreation of the American super-hero Batman. It is directed by Christopher Nolan, and features a galaxy of Hollywood stars including Christian Bale, the late Heath Ledger, Aaron Eckhart, Maggie Gyllenhaal, Michael Caine, and Morgan Freeman. In common with films of a similar genre, it is of the highest quality from an aesthetic, directional, acting and cinematographic perspective, and makes for compelling viewing. Its themes are more complex than its predecessors, and are clearly aimed at various age groups. The film starts on a positive note with the new dedicated District Attorney, Harvey Dent, making a major impact on organized crime in Gotham City. Aggressive and robust action leads to a large number of hoodlums being arrested, and this causes confusion within mob ranks.
- 2) The Joker steps into the void and offers bizarre leadership and options. We are introduced to the anarchical, whimsical antagonist in the first

scene when we witness his capacity for destruction, deceit, and total disregard of norms of accepted and anticipated behavior. Unlike the mob, he has no desire for wealth and is not driven by any cause or principle. He is a figure of chaos, and he seeks to wreak havoc on society. He 'just wants to watch the world burn'. As the movie unfolds, one gets the unnerving feeling that this Joker may be a match for the more fallible Batman. This is accentuated by the commanding and memorable performance of Heath Ledger whose wayward hair, gravel voice, disconcerting facial twitches, and menacingly unfunny face all contribute to the Joker assuming centre-stage in this film. A rampant Joker is contrasted with a more reticent Batman, who contemplates handing over the rigours of the battle against crime to Dent, retiring to the arms of Rachel Dawes, and consoling himself by enjoying the opulence and trappings of his wealth. Their tussle takes centre stage as Batman seeks to retool his technology to deal with the threat. The magnitude of the threat posed by the Joker compels Batman to resort to violence and, in a desperate attempt to establish a parity of arms, to infringe the privacy of people whom he is dedicated to protecting.

### **Assessment of arguments submitted**

- 3) One of the underlying themes that generated a fair amount of discussion in the deliberations of the examiners and at the hearing of the appeal was the confusion and overlap between good and evil. The Joker is obsessed with exposing the identity of Batman, and he seeks to ignite and evoke the basest and worst instincts of humankind by placing society and individuals in situations where survival and revenge become almost irresistible. Dent succumbs to this, and his subsequent two-face character is a victory for the Joker. However, the actions of the convicts and the ordinary citizens on the boats signal that people have the capacity for good and evil. Catastrophe is averted, but there is considerable ambivalence at the conclusion of the film. This is not a typical fantastical film, and some scenes are uncomfortably realistic.

- 4) A classification committee viewed the film on the 1<sup>st</sup> July 2008 and assigned the film a restrictive classification of 16(V) after having discussed the matter and reached consensus. Prior to the discussion, one of the examiners was of the view that a restrictive classification of 13(V) would be appropriate. In a carefully reasoned set of papers, the examiners indicated that the continuous and prolonged violence, accompanied by an abiding sense of menace and threatening sound effects, may be disturbing to young viewers. Some of the scenes that they identified as causing concern were the police car and helicopter chases, the numerous explosions, the torture scene, the stabbing/knifing of an individual, and the young child having a gun held to his head. The examiners were also concerned that the blurring of good and evil might confuse young children.
  
- 5) NuMetro distributors were aggrieved at the classification, and launched an appeal in which they asserted that a 13(V) classification would be more appropriate. We viewed the film and heard arguments on the 15<sup>th</sup> July 2008. At the request of the appellants we handed down our decision on the 16<sup>th</sup> July 2008, and indicated that within two weeks our reasons would be given for our conclusion that a restrictive age classification of 13(V) was the most appropriate.
  
- 6) Ms P. Beck and Mr R. Ratshitanga represented the Board, and Mr Mark Rosin of Attorneys Rosin, Wright and Rosengarten represented NuMetro. We are indebted to all the parties for their useful and thoughtful representations. It was apparent that the examiners had reflected on and considered this matter carefully, and their oral representations were particularly impressive. The fact that we reached a different conclusion should not be seen as a slight on the reasoning and conclusion reached by the examiners. This appeal proved to be particularly complex, as a number of issues had to be deliberated upon and considered for the first time. We should also add that the Review Board only reached unanimity after a protracted discussion. It

appeared that this film perhaps best slotted within the penumbras of the 13 and 16 classifications.

- 7) Mr Rosin commendably conceded that this film represents a ratcheting up from traditional superhero comic films such as *Iron Man*. The Joker was a sophisticated character – unlike the one-dimensional villains of other films of a similar genre. It was thus common cause that the only applicable classifications were either a 13 or 16 age restriction. Ms Beck argued on behalf of the examiners that scenes of violence permeated and saturated the film from beginning to end. She argued that the violence was set in a context of menace and intimidation. She submitted that the psychological violence and the messages conveyed were equally disturbing. The fear and anguish on the faces of the people on the boats as they wrestled with the dilemma of whether to blow up the other boat in order to survive, and the concern on the face of the child threatened by a demented Two-Face, were examples of this. She argued that the scenes should be considered in their entirety, and that focusing solely on the physical violence would be unacceptable. Thus when the Joker stabs a mob member, we witness his actions fleetingly, but the full effect is conveyed through the camera panning across the expressions of others in the room. Ms Beck argued that violence should be given a broad interpretation, and should include the acts of physical violence, psychological violence, and the actions conveying the impression of intense violence.
  
- 8) Mr Rosin argued that the present guidelines<sup>1</sup> (dated May 2008) are less conservative than their predecessor. He referred to suggestions in our previous awards that examiners start from the less restrictive classifications and move to more restrictive age classifications if there is a need to protect children. He argued that one of the examiners had initially decided upon a 13(V) as this was a fantastical film. He submitted that no coherent reason emerged from the reports as to why

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<sup>1</sup>. *Government Gazette* No 31096 of 28 May 2008.

this was inappropriate. However, his main submission was that this film fell within the suggested 13 age classification in the guidelines in respect of the classifiable element of violence.

### **Analysis and application of the guidelines**

- 9) In respect of the classifiable element of violence, the guidelines provide that a 13 classification is appropriate if:

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

The guidelines provide that a 16 classification would be appropriate if scenes of realistic violence occurred within a meaningful context and were necessary for the development of plot or character. Scenes of domestic, racial, religious or sexual violence must be brief, infrequent, and justified by context.

- 10) Our discussions during the appeal focused primarily on these provisions. There may be much veracity in the submission made by Ms Beck that the film producers are pushing the boundaries, and are communicating the fact that intense violence has occurred by relying on other techniques rather than portraying and focusing on the actual acts of violence. The intensity of the actions culminating in the violence, the menacing sound effects, and the reactions of people – all these communicate the intensity of violence that is not actually portrayed.

- 11) A holistic reading of the guidelines makes it clear that 'violence' refers to physical violence. It refers to the effect of violence on human and

animals, or bloody detail. 'Effect' in this context refers to the consequences of the violence. When the word 'violence' is used in an unqualified sense, it refers to 'physical force used so as to injure or damage'<sup>2</sup>. Thus what has to be assessed is the actual acts of *physical* violence. The issue is whether the scenes conveying physical violence in the film can be classified either as moderate or realistic. If these specific scenes can reasonably be classified as having moderate violence, even if the message is conveyed that (unseen) intense violence has been committed, the film must, in that event, get the benefit of the lower classification. The examiners were hard-pressed to point to a scene in which realistic violence was portrayed. There was a considerable amount of action, and many scenes that evoked a sense of menace and trepidation; and often the message was communicated that intense violence was inflicted. However, there was very little portrayal of actual physical violence or the consequences of such violence.

12)The guidelines state that the impact of the classifiable elements in respect to the 13 classification must be moderate and of an intensity that would not be disturbing to children under the age of 13. The scenes of actual violence in the film can be correctly described as no more than moderate. There was no lingering focus on gore or blood. There were explosions and action aplenty, but these must be distinguished from scenes of *violence*. The purpose of the former is to thrill and entertain, while the latter can be disturbing and harmful. Greater latitude can be permitted in respect of scenes involving action than those that portray violence. While the boundaries are no doubt tested in this film, this is a film of a fantastical nature about a comic superhero. It is relevant to have regard to this factor when assessing the actual nature of the violence portrayed. Having found that the violence portrayed is moderate, we must conclude that a 13 (V)

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<sup>2</sup>. Definition of 'violence' in Webster's *Unabridged Dictionary*.

classification in respect of the classifiable element of violence would be adequate.

13) There was debate as to whether the theme was of a nature or complexity that justified a 16 classification. This is about a superhero who relishes the opportunity to shed the responsibilities of fighting evil, about a credible and committed crime fighter who lives long enough to become a villain, and about the darker side of human nature. While there is ambivalence, Batman still perseveres and saves the day; and the people on the boats make the correct decisions after threatening to give expression to their baser instincts. While the themes are developed, complex, and mature, we are of the opinion that they would not be disturbing and upsetting to viewers of 13 and above. In our opinion, it would be excessively restrictive not to permit a fifteen-year-old (for example) to view this film on the basis that the themes were of a mature and complex nature.

14) This film undoubtedly contains menacing material, and one of the issues that we considered was whether this had the potential to cause harm to children and thus justify the imposition of a more restrictive classification. The musical score in most of the scenes featuring the Joker clearly accentuated the sense of menace. In addition, the following scenes contributed to a heightened sense of menace:

- The bank robbery, with the robbers turning against each other.
- An incendiary device being placed in the mouth of the manager of the bank.
- A mob member being impaled on a pencil.
- The knife threat to Rachel Dawes, and the chilling explanation of the scars on the mouth of the Joker.
- The threat by Two-Face to kill the petrified children.
- Batman being shot.
- An attack by dogs.

15)The sense of menace created by the combination of the above-mentioned and other scenes does not, in our opinion, justify moving into a more restrictive categorization. The producers and director in many instances deliberately ameliorated some of the effects and consequences of the scenes. Batman emerges unscathed, the children are saved, and the Joker's explanations of his facial scars, while delivered in a frighteningly realistic tone, change repeatedly, and it becomes apparent that this is being used for effect. Finally, while there is ambivalence about the fate of the Joker at the end, we see him as a captive, and the immediate threat and danger that he poses appears to have been dissipated.

16)Having considered the arguments, and reflected on the guidelines and the applicable legal principles, we reached the opinion that the violence was both brief and moderate, and that, while the themes were complex and mature, they will not be disturbing to viewers of 13 and above. The menace of the film did not reach a level that justified the imposition of a more restrictive classification. It was for these reasons that we decided on a restrictive age classification of 13(V). We were unanimous after discussion and debate.

**Conclusion:**

- 1. The decision of the Classification Committee made on the 1<sup>st</sup> July 2008 to assign a classification of 16(V) to the film *The Dark Knight* is set aside.**
- 2. A restrictive age classification of 13(V) is assigned to the film *The Dark Knight*.**

Concurred by:

Ms P. Marek

Ms R. Smith

Adv. R. Lessick

Revd M. McCoy

Dated at Durban on the 25<sup>th</sup> July 2008