

1/2005

In the Matter Between:

NuMetro Distribution

and

The Film and Publication Board.

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Re: Appeal against the classification of the film "Hostage"  
Award.

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**Professor K Govender**

**Introduction**

1. A two-person classification committee of the board assigned the film *Hostage* a restrictive classification of 18 with a language and violence advisory. The classification committee based its decision on strong language and 'bloody violence [which] unfolds throughout the movie, involving shooting, shoving and pushing and tying up of young children who are held hostage, burning bodies of all of which are graphic and explicit.'<sup>1</sup> NuMetro was aggrieved by the decision and argued that the classification was far too restrictive. It argued that given the nature of the film, a restrictive classification of 16 with appropriate advisories would be adequate to protect the interests of children. The Review Board viewed the film and heard representations on the 27<sup>th</sup> May 2005. We are grateful to the Chief Examiner Mr. A.Y. Bhayat and to Mr. Rosin who appeared for NuMetro for the submissions made to us in support of their conclusions.
2. The Review Board unanimously decided to reverse the decision of the Classification Committee and substitute it with a restrictive age

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<sup>1</sup> . The justification is obtained from the Chief Examiner's final report dated 14<sup>th</sup> April 2005

classification of 16 with a language and violence advisory. These are the full reasons for our conclusions.

### **Description.**

3. The film is an action thriller starring Bruce Willis and has attracted mixed reviews. Jeff Tallee, played by Bruce Willis, is a laid back hostage negotiator who, in the first scene, attempts to negotiate an end to a hostage drama involving a man, his wife and child. Tallee makes the judgment call not to sanction the killing of the man when the latter is in the sights of the sharp-shooters, and opts to continue negotiating with him. Events spiral out of control and the hostage-taker murders his wife and child before turning the gun on himself. We do not witness the actual violence, but see its consequences and aftermath.
  
4. In the next scene, which is a year later, we learn that Tallee has sought refuge as the head of the police department in a small town. His family life and relationship with his daughter has deteriorated as a consequence of the move. A band of teenagers, including a psychopath called Mars, attempt to steal a vehicle from the highly secured home of an accountant. The opportunistic thieves pick on the wrong home. The plan fails and they are trapped with the accountant and his two children in their fortress-like home. We subsequently learn that the accountant works for the mob and that he has valuable information stored on a compact disk which could incriminate them in criminal activities. The mob then kidnaps Tallee's wife and child in order to coerce him to retrieve the CD from the home. Willis infiltrates the home and has to deal with the criminals within and the mob killers disguised as FBI officials who also descend upon the house to retrieve the CD.

5. The contention on behalf of Nu Metro is that the film is a typical suspense thriller that uses music and other effects to achieve its objective. It contends that the average viewer aged 16 would be able to properly understand and appreciate the film. Reference was made to films of a similar genre which attracted a '16' classification. As indicated above, the Classification Committee was of the view that there were frequent scenes of graphic and explicit violence, thus justifying a restrictive classification of '18'.

### **A Discussion of the Applicable Legal Principles.**

6. It was accepted by all parties that the only appropriate classification for the film is either a '16' or '18' age classification. The classification guidelines<sup>2</sup> in respect of a '16' classification regarding violence provide:

There may be scenes of intense violence, within context, and as part of the development of plot or character or illustration of dramatic events but not as gratuitous violence.

7. A reading of the regulation makes it clear that an assessment must be made that the violent scenes can be classified as gratuitous before the film can attract an '18' age restriction. There is nothing in the reasoning of the Classification Committee that demonstrates that this issue was considered and reflected upon.
8. In our previous awards, we have urged Classification Committees to start from the least restrictive classification and move progressively to more restrictive classifications. The more restrictive classification should only be adopted if a decision is made that the less restrictive ones are inappropriate. Classifiers are appointed from various segments of the

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<sup>2</sup> . Classification Guidelines -14<sup>th</sup> November 2003

South African community and bring with them their valuable life experiences. However, the decision to classify is not a subjective one based on life experiences alone. The decision must be made in terms of the Films and Publication Act<sup>3</sup>, the guidelines promulgated in terms of the Act, and by reference to our experiences.

9. The statutory duty imposed on examiners is as follows:

After having reached a decision in terms of subsection (4) read with subsection (5), the classification committee shall inform the chief executive officer of its decision and the reasons therefore and ...

Thus the legal obligation is to determine a classification, and if a restrictive classification is decided upon then reasons must be supplied to justify the decision. The reasons and justification must be based on the Act and on the guidelines. There must be a causal and logical connection between the reasons, the requirements of the Act, the guidelines, and the conclusions. The decision to assign an "18" classification is the ultimate conclusion. Prior to reaching the ultimate conclusion, a classification committee must reach a conclusion on the existence of gratuitous violence which can be described as a preliminary conclusion. The preliminary conclusion, in turn, must be supported by reference to scenes in the film.

10. The main factor distinguishing a '16' from an '18' classification is the inclusion of scenes of 'gratuitous violence'. In this instance, the reasons would have to indicate why the Classification Committee decided that the violent scenes were of a gratuitous nature. This would be necessary to justify the decision to adopt the '18' classification. If this is not done, then proper and adequate reasons have not been supplied as required by the Act.

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<sup>3</sup> . Films and Publication Act 65 of 1996 as amended.

11. Gratuitous is defined as 'not required, called for, or warranted by the circumstances; made or done without sufficient cause or reason'<sup>4</sup>. The guidelines permit films containing scenes of intense violence to be viewed by those under the age of 16 if these scenes are part of the development of the plot or character. In contrast to this are films which contain scenes of gratuitous violence. Viewers younger than eighteen are not permitted to watch these films.

12. Mr. Bhayat made the point that virtually all scenes of violence, even the most explicit and intense, may conceivably be linked to a plot and would thus be permissible to viewers under the age of 16. He cautioned that this would be undesirable. There is some merit in this contention. In order to deal with this we propose the following test:

Are the scenes of violence, from a reasonable and an objective perspective, required for the development of the plot or characters?

The more intense, the more graphic and the more explicit the violence, the less likely it is to be regarded as being required for the development of the plot or character. Conversely the less intense, the less graphic and less explicit the violence, the more likely it is to be regarded as being required for the development of the plot or character. Scenes in the film must be assessed according to this test and then a conclusion reached as to whether they can be described as gratuitous or not.

### **Application of the Law to the Facts:**

13. There are a number of scenes involving violence, and an assessment must be made as to the most appropriate classification. The following scenes must be assessed cumulatively in the context of the film:

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<sup>4</sup> . Webster's New Universal Unabridged Dictionary.

- The first scene when the hostage taker threatens to kill his captives, the sense of foreboding as we hear the prayer for forgiveness, the shots, and the aftermath of the shooting as we see the blood on the hands of Jeff Talley.
- The execution of the officer responding to the silent alarm signal and the desperate attempts by her to escape.
- The disturbing scene when Talley is made aware of the kidnapping of his wife and daughter.
- Mars throwing one of the brothers from the balcony and the menacing sense of gratification that he appears to derive from his action.
- The knife being plunged into Mars' face.
- Scenes where the bogus FBI officers are incinerated.
- The burning to death of Mars.
- The last scene in the shed when Talley and the accountant kill those holding the former's wife and daughter hostage.

14. There were a number of scenes of violence, but there was no excessive and explicit focus on the acts of violence itself. Emphasis was often placed on the aftermath of the violence. Thus in the first scene we do not witness the child being killed. We anticipate the killing, hear the shots and see the bloody bodies. Similarly, with the killing of the officer, we witness the killing fleetingly and watch the wounded officer try to crawl to safety. Mars throwing his accomplice over the balcony is quick and unpleasant, but more disturbing is his lingering observance of the dying boy. The film impacts, not primarily through the violence itself, but rather by the clever use of the consequences of the violent action. There is thus no unwarranted or excessive use of violence. Yet some of the scenes are gripping and disturbing.

15. One of the violent scenes identified by the Classification Committee in its argument before us, was the first scene when the young child is killed. The death of child was central to the plot as it led to Bruce Willis's character changing his vocation and choosing another life-style. The death of the child had an enormous impact upon him. The scene cannot be described as being the depiction of gratuitous violence.

16. We are of the opinion that the scenes of stylized violence cannot be described as gratuitous violence. Most of the scenes do not dwell on the acts of violence and neither do they unduly accentuate the suffering of the victims. In the circumstances, we were unanimously of the view that a restrictive classification of 16 with a V and L advisory would be appropriate for the film.

**Decision:**

- **The classification assigned by the classification committee is set aside.**
- **The film *Hostage* is assigned a restrictive age classification of 16 with a violence and language advisory. 16 (L)(V).**

**Concurred by:**

**Ms. Penny Marek.**

**Rev. Mike McCoy.**

**Adv. Ronald Lessick.**

**Mr. Jack Phalane**

**Dated at Durban on the 10<sup>th</sup> June 2005.**