

IN THE MATTER

of The Films, Videos, and
Publications Classification Act
1993

AND

IN THE MATTER OF

an application under Section 49 of the
Act by United International Pictures
of the film recording "8 Mile"

**DECISION OF THE
FILM AND LITERATURE BOARD OF REVIEW
DECISION NUMBER ONE**

THE BOARD

1. Claudia Elliott, President
2. Greg Presland, Vice President
3. Mark Andersen
4. Dr Brian McDonnell
5. Pamela Meekings-Stewart
6. Marion Orme
7. Dr Lalita Rajasingham
8. Stephen Stehlin

Meeting at Wellington on 3 March 2003.

THE CONTRIBUTORS

- [1] The Applicant, United International Pictures (hereinafter after called "UIP").

[2] The Office of Film and Literature Classification (hereinafter called "the Classification Office").

BACKGROUND

[3] The Applicant has applied for a review of the decision of the Classification Office pursuant to Section 47 of the Films, Videos Publications Classification Act 1993 (hereinafter called "the Act") in respect to the film "8 Mile".

[4] Pursuant to Section 52 of the Act the Film and Literature Board of Review (hereinafter called "the Board") re-examined the publication without regard to the decision of the Classification Office.

THE FILM

[5] 8 Mile is a film, 111 minutes long, based on the real life story of musician Eminem. Set in the depressed communities of contemporary Detroit, the style and language reflects the youths who come from that environment.

[6] Jimmy Smith Jr., alias Rabbit (played by Eminem), is a young man who lives with his mother and little sister in a poor part of town. Rabbit has a number of problems in his life. He does not get on with his mother's boyfriend, and is dismayed at this other's lack of drive to work her way out of her poverty. He has a poor work record, and is seen by his current employer as a bit of a slacker. He is also a budding rapper, a situation complicated because he is white, and the rap scene is considered by many to be the preserve of African-Americans.

[7] Encouraged by his black friends to enter a "battle", a competition where rappers duel with each other one on one, Rabbit "chokes" at the crucial moment.

[8] With his friends he gets up to various antics, including shooting at people with paint balls, and setting fire to a derelict house that has been used as a haunt for rapists and crack dealers. The group also get involved in a fight with a rival rap gang called "Leaders of the Free World". The altercation stops when one of their group, Cheddar Bob, pulls a gun and fires it into the air. He is roundly criticized by both groups, and accidentally shoots himself in the leg while putting the pistol back into his belt.

[9] Rabbit meets a young woman, Alex, and they quickly develop a sexual relationship. She describes her dream, which is to go to New York to be a model. Wink, a local with connections, arranges for her to have a portfolio of photos assembled. Wink also arranges for Rabbit to meet some movers and shakers in the music industry, but when Rabbit turns up at the studio he discovers Wink and Alex having sex, and a fight ensues.

[10] In retaliation the "Leaders of the Free World" beat up Rabbit, prompting him to take the gang on in another rap-battle. After defeating two of the Free World he is pitched against Papa Doc, the leader of the gang and reigning champion. In his part of the battle Rabbit parodies his own humble situation and then ridicules his opponent as being middle class with a private school education, and whose real name is Clarence. Papa Doc is unable to respond and Rabbit becomes the new champion.

[11] Despite achieving audience acclaim, Rabbit is not content to wait for success to come to him, but heads back to the factory to earn money to produce a demo disc.

SUBMISSIONS

UIP Submission

[12] A written submission with an accompanying letter dated 4 February 2003 comprised the submission by United Pictures.

[13] The basis of the appeal by United Pictures is that the current classification by the Classification Office is "too subjective and gives undue regard to the genre of the movie rather than having a balanced regard for the message and 'good news' story that motivated this movie to be made".

[14] The Australian classification of "M" more reasonably recognises the content and possible contentious scenes and language the film displays.

[15] The theme of the film is one of a positive and powerful message to the youth of New Zealand. It is a story about the boundaries that define our lives and a young man's struggle to find the strength and courage to transcend them.

[16] This is a true story based on one of the world's most popular singing artists Eminem.

[17] Russell Baillie of the New Zealand Herald reviews "8 Mile" and states "perhaps the best thing about "8 Mile" is that while it is the Eminem movie it's still a movie. It's really a conventional old fashioned talent, will overcome all...".

[18] It is accepted that there is a degree of language and adult scenes in the movie but an R13 classification would more properly and fairly give weight to the overall theme and message being sent out to the younger generation.

[19] A balanced process will result in R16 being seen as too harsh and unreasonable.

The Classification Office Submission

[20] The Classification Office has classified "8 Mile" R16 with the note "contains violence, offensive language, drug use, and sex scenes".

[21] The film gets through the Section 3(1) gateways of sex, violence, and crime.

[22] The film does not fall within Section 3 (2).

[23] The Board will need to draw upon its knowledge of differences between how 13 and 16 year olds are likely to read this film in order to assess the extent of any injury to the public good that could be caused by "8 Mile" being made available to a younger group.

[24] It is available to the Board to come to a classification other than R16 or R13 considering the criteria in Section 3 (1) (3) and (4).

[25] Pursuant to Section 3 (1) the Board is required to assess whether the film describes, depicts, or otherwise deals with matter such as in this case sex, crime, and violence. It must also assess whether the manner in which these things are depicted is likely to injure the public good.

[26] Of particular relevance to these criteria are the following scenes.

Sex:

- a) Rabbit comes home to find his mother having sex on the couch by bouncing up and down on her boyfriend.
- b) Alex licks her hand and places it between her legs for lubrication when she and Rabbit have sex in the factory.
- c) Rabbit's mother complains to Rabbit that her boyfriend doesn't "go down" on her any more.

Violence:

- d) Rabbit fights with Greg after he insults and then begins to beat Rabbit's mother. Lily, Rabbit's little sister, hides under the table.
- e) Rabbit is beaten and kicked by a rival rap gang while his little sister watches, increasingly distressed, through the trailer window.

Crime:

- f) Reasonably pervasive and casual drug use throughout the film.

[27] Section 3 (3) requires an assessment of the extent and degree and manner in which the film portrays matters listed in that Section. Although the scenes do not easily fit most of the criteria it could be argued that the film depicts physical conduct of a degrading nature with respect to Kim Basinger's character. The context in which the depictions occur are important, as her character ultimately redeems herself with the assistance of a bingo win.

[28] The Office agrees with the Applicant that the film has artistic merit and social importance as a story of talent transcending adversity. The film is also significant for recording a shift in rap discourse away from issues of race and towards issue of socio-economic class.

[29] "8 Mile" has received and been nominated for a number of awards including an Oscar nomination this year for best song (Lose Yourself) and a Chicago Film Critics Award nomination of Eminem as most promising performer.

[30] “8 Mile” has received the following classification in other jurisdictions:

Ireland	18
British Columbia	18A
Alberta	18A
Hong Kong	11B (not suitable for under 18)
USA	R
Singapore	16
UK	15
Norway	15
Finland	15
Ontario	14A
Quebec	13
Portugal	12
Germany	12
Netherlands	12
Switzerland	12
Sweden	11
Australia	M

[31] The Office submits that a restriction to 16 years of age and over is sufficient to prevent any injury to the public good that could be caused if the film were to be made available to 13, 14, and 15 years old, less able to distance themselves from the reasonably strong, and to them disturbing, scenes of domestic violence witnessed by Rabbit’s little sister.

[32] Teenagers under the age of consent may well be having sex but they are also less likely to be able to contextualise the film’s sex scenes.

[33] The portrayal of cannabis use as an accepted part of the characters’ lifestyle would tend to legitimise antisocial and illegal behaviour in the minds of younger viewers, which again is likely to cause injury to the public good.

[34] An R16 classification is a remedy that is sufficient to remove the injury likely to remain with a lower restriction, and is also therefore a reasonable limitation on the freedom of expression that can be demonstrably justified in a free and democratic society.

THE APPLICABLE LEGISLATION

- [35] **3. Meaning of “objectionable”** –(1) For the purposes of this Act, a publication is objectionable if it describes, depicts, expresses, or otherwise deals with matter such as sex, horror, crime, cruelty, or violence in such a manner that the availability of the publication is likely to be injurious to the public good.
- (2) A publication shall be deemed to be objectionable for the purposes of this Act if the publication promotes or supports, or tends to promote or support, -
- (a) The exploitation of children or young persons, or both, for sexual purposes; or
 - (b) The use of violence or coercion to compel any person to participate in, or submit to, sexual conduct; or
 - (c) Sexual conduct with or upon the body of a dead person; or
 - (d) The use of urine or excrement in association with degrading or dehumanising conduct or sexual conduct; or
 - (e) Bestiality; or
 - (f) Acts of torture or the infliction of extreme violence or extreme cruelty.
- (3) In determining, for the purposes of this Act, whether or not any publication (other than a publication to which subsection (2) of this section applies) is objectionable or should be given a classification other than objectionable, particular weight shall be given to the extent and degree to which, and the manner in which, the publication –
- (a) Describes, depicts, or otherwise deals with -
 - (i) Acts of torture, the infliction of serious physical harm, or acts of significant cruelty;
 - (ii) Sexual violence or sexual coercion, or violence or coercion in association with sexual conduct;
 - (iii) Other sexual or physical conduct of a degrading or dehumanising or demeaning nature;
 - (iv) Sexual conduct with or by children, or young persons, or both;
 - (v) Physical conduct in which sexual satisfaction is derived from inflicting or suffering cruelty or pain;
 - (b) Exploits the nudity of children, or young persons, or both;
 - (c) Degrades or dehumanises or demeans any person;
 - (d) Promotes or encourages criminal acts or acts of terrorism;

(e) Represents (whether directly or by implication) that members of any particular class of the public are inherently inferior to other members of the public by reason of any characteristic of members of that class, being a characteristic that is a prohibited ground of discrimination specified in section 21(1) of the Human Rights Act 1993.

(4) In determining, for the purposes of this Act, whether or not any publication (other than a publication to which subsection (2) of this section applies) is objectionable or should be given a classification other than objectionable, the following matters shall also be considered.

- (a) The dominant effect of the publication as a whole:
- (b) The impact of the medium in which the publication is presented:
- (c) The character of the publication, including any merit, value, or importance that the publication has in relation to literary, artistic, social, cultural, educational, scientific, or other matters:
- (d) The persons, classes of persons, or age groups of the persons likely to be made available:
- (e) The purpose for which the publication is intended to be used:
- (f) Any other relevant circumstances relating to the intended or likely use of the publication.

4. Whether publication objectionable a matter of expert judgment

–(1) The question whether or not a publication is objectionable is a matter for the expert judgment of the person or body authorised or required, by or pursuant to this Act, to determine it, and evidence as to, or proof of, any of the matters or particulars that the person or body is required to consider in determining that question is not essential to its determination.

(2) Without limiting subsection (1) of this section, where evidence as to, or proof of, any such matters or particulars is available to the body or person concerned, that body or person shall take that evidence or proof into consideration.

11. Rating and description applicable to copies – For the purposes of this Part of this Act, the rating and description (if any) assigned to any film under section 10 of this Act shall apply to every copy of that film that is identical in content with it, whether or not the

copy is in a different gauge or a different technical form.

Cf. 1983, No. 130, s. 8 (5) – (8); 1987, No. 85, s. 13 (3)

23. Examination and classification – (1) As soon as practicable after a publication has been submitted or referred to the Classification Office under this Act, the Classification Office shall examine the publication to determine the classification of the publication.

26. Classification applies to identical copies – For the purposes of this Act, the classification given to a publication under section 23 or section 55 or section 56 of this Act shall apply to every copy of that publication that is identical in content with it.

Cf. 1987, No. 85, s. 23 (2)

27. Conditions relating to display of restricted publications – Where, pursuant to this Part of this Act, the Classification Office classifies any publication as a restricted publication, the Classification Office shall in every case consider whether or not conditions in respect of the public display of that publication should be imposed pursuant to this section, and may, at the time of classifying that publication, impose such conditions.

(2) In determining whether or not to impose conditions pursuant to this section, and in determining the conditions that it should impose, the Classification Office shall have regard to the following matters:

- (a) The reasons for classifying the publication as a restricted publication:
- (b) The terms of the classification given to the publication:
- (c) The likelihood that the public display of the publication, if not subject to conditions or, as the case may be, any particular condition, would cause offence to reasonable members of the public.

(3) Where the Classification Office considers that the public display of the publication, if not subject to conditions under this section, would be likely to cause offence to reasonable members of the public, the Classification Office shall, at the time of classifying that publication, impose such conditions under this section in respect of the public display of that publication as it considers necessary to avoid the causing of such offence.

(4) The conditions that may be imposed pursuant to this section in respect of the public display of a publication (other than a film) are as follows:

- (a) That when the publication is on public display, the classification given to the publication must be shown, in such manner as the Classification Office may specify, on –
 - (i) The publication; or
 - (ii) Any package in which the publication is kept:
- (b) That the publication must be publicly displayed only in a sealed package:
- (c) That where the publication is publicly displayed in a package, the package must be made of opaque material:
- (d) That –
 - (i) The publication; or
 - (ii) Any advertising poster relating to the publication, - or both, must be publicly displayed only in premises, or a part of premises, set aside for the public display of restricted publications (whether or not articles other than restricted publications are also displayed in those premises or that part of those premises):
- (e) That –
 - (i) The publication; or
 - (ii) Any advertising poster relating to the publication, - or both, must not be publicly displayed in any place in which the publication is available for supply, and must be shown in that place only to persons who make a direct request for the publication, or as the case requires, the poster.

(5) The conditions that may be imposed pursuant to this section in respect of the public display of a film are as follows:

- (a) That –
 - (i) The film; or
 - (ii) Any film poster relating to the film (whether or not the poster is attached to the cassette, case, or other container in which the film is kept),-
or both, must be publicly displayed only in premises, or a part of premises, set aside for the public display of restricted publications (whether or not articles other than restricted

publications are also displayed in those premises or that part of those premises):

- (b) That the film, or any cassette, case, or other container in which the film is kept, must be publicly displayed only in a package made of opaque material:
- (c) That –
 - (i) The film; or
 - (ii) Any film poster relating to the film (whether or not the poster is attached to the cassette, case, or other container in which the film is kept), -or both, must not be publicly displayed in any place in which the film is available for supply, and must be shown in that place only to persons who make a direct request for the film or, as the case requires, the poster.

[36] The following sections of the New Zealand Bill of Rights Act 1990 (hereafter called “the Bill of Rights”) apply:

4. Other enactments not affected – No court shall, in relation to any enactment (whether passed or made before or after the commencement of this Bill of Rights),-

- (a) Hold any provision of the enactment to be impliedly repealed or revoked, or to be in any way invalid or ineffective; or
 - (b) Decline to apply any provision of the enactment –
- by reason only that the provision is inconsistent with any provision of this Bill of Rights.

5. Justified limitations – Subject to section 4 of this Bill of Rights, the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

6. Interpretation consistent with Bill of Rights to be preferred – Wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other meaning.

THE DECISION

[37] The Board unanimously holds the film “8 Mile” to be objectionable if made available to persons under the age of 13 years. No other conditions are required by the Board.

Section 3 (1)

[38] The Board considers pursuant to Section 3 (1) of the Act that the publication passes through the subject matter “gateways” of sex, violence, and crime in that it describes, depicts, expresses, or otherwise deals with sex, violence, and crime in such a manner that the availability of the publication is likely to be “injurious to the public good” if unrestricted.

[39] In the Court of Appeal decision of *Living Word v Human Rights Action Group* (2000) 3 NZLR 570 (hereinafter called the *Living Word* decision) it was determined that the Board must consider whether the publication passes through one of the “gateways” and then consider if it is likely to be “injurious to the public good”.

[40] The decisions of *Collector of Customs v Lawrence Publishing Co Limited* (1986) 1 NZLR 404 (hereinafter called the Lawrence Publishing decision) assists in defining “injurious to the public good”. At p409 Woodhouse P states

“The statutory concept requires demonstration that any relevant material has a capacity for some actual harm in order to justify the contemplated censorship”.

[41] In *The Society for the Promotion of Community Standards Inc v Everard* (1987) 7 NZLR 33 (hereinafter called the Everard decision) the issue of “likelihood of injury to the public good” is addressed as follows”

“That requires for discernible injury and capacity for some actual harm do not impose a procedure or evidential necessity for actual evidence to that effect. They are matters which an expert body can establish from its own judgment if necessary ... When one considers the likelihood of injury to the public good, one looks for a likelihood sufficiently real to be discernible or actual. Mere paranoid possibilities do not suffice ... In the end indecency and within that concept any necessary prerequisites of injury to the public good to a large extent are less matters of fact than of judgment. While not quite in the league of the search for love, beauty, and/or the meaning of life,

the search of injury to the public good in the end involves a very considerable message of value judgment.”

Sex

[42] Pursuant to Section 3 (1) of the Act there are three sex scenes in the film which the Board must consider in relation to “likely injury to the public good”:

(i) When Rabbit returns home to find his mother having sex on the couch with her boyfriend. The scene is brief with a wide shot of her naked back as she is bouncing up and down.

(ii) When Rabbit has sex in the factory the couple are partially naked. There are no genitals shown and it is almost TV commercial style. Underwear is seen coming down and facial expressions portray the parties are having sexual intercourse. The viewer is unable to tell whether a condom is used.

(iii) There are two sequences involved in the scene when Rabbit sees his girlfriend and his friend having sexual intercourse in the film studio, the first when Rabbit is passing the studio and sees the couple and the other when he goes into the studio and violence erupts. The couple are semi-naked only, there is no lingering shot and, after the sexual scene is interrupted by Rabbit, the concentration is instead on violence

[43] There is also verbal comment made about sex when his mother complains to Rabbit that her boyfriend is “not going down on her”. This comment is neither welcomed nor pursued by Rabbit to any great degree and appears to reinforce his mother as “trailer trash”.

[44] The Board notes the sexual activity in “8 Mile” is perhaps no more graphic than some television programmes which are freely available for viewing by even pre-teen children. The Board finds however that the sexual activity and comment is explicit enough to be unacceptable for pre-teen children to view and process in a manner appropriate for their age.

[45] The Board in its opinion finds that in New Zealand society, children and young people 13 years and up have sufficient life experience and knowledge of sexual

activity to understand what is happening in the film and not be adversely affected by it.

Crime

[46] In respect to crime, the criminal aspects of note are drug use, arson, and possibly unlicensed use of guns.

[47] Drug use occurs several times in “8 Mile” but is subdued and is not highlighted as a theme of the film. The central character Rabbit does not appear to participate in the drug use which is limited to smoking marijuana.

[48] The use of guns is dealt with in the section below on violence.

[49] The arson of the derelict house had moral overtones to it as the house was the scene of a sexual assault on a neighbourhood child. The arson appeared to be a spontaneous response to the abhorrence of the crime and to the civic neglect represented in the house. Rabbit was temporarily trapped in the upstairs portion of the house but escaped without great difficulty.

[50] The Board had some concern that the arson was portrayed as an enjoyable event, similar to that in “The Scarecrow” and “Came a Hot Friday”, but finds that teenagers would have a sufficiently developed moral code to understand that arson has consequences should they be tempted to emulate that behaviour.

Violence

[51] The main incidences of violence are when:

- (i) Rabbit has an altercation with his mother’s boyfriend Greg which is witnessed by Rabbit’s younger sister Lily,
- (ii) there is a fight in the street with the Free World gang during which a gun is produced,
- (iii) Greg and Rabbit and Rabbit’s mother have an altercation with Lily watching,
- (iv) Rabbit is beaten up by the Free World gang,

(v) there is a threat of violence with a gun.

[52] The violence is understated with a few sporadic scenes of low to mid level violence. The tone of the film changes with Rabbit learning that words are more potent weapons than firearms and fists.

[53] Submissions are made by both the Office and the Applicant about obscene language in the film. In the context of this film it could be seen as depicting accurately the language of those being portrayed. American films which show poor urban lifestyles often proliferate language which may not be acceptable in other social contexts in New Zealand.

[54] The Board finds that teenagers have sufficient developmental awareness to establish that the language in “8 Mile” is not polite social discourse in New Zealand.

Section 3 (2)

[55] The Board did not find any of the sub-sections in Section 3 (2) applicable to “8 Mile”. There is violence in the film but, in the Board’s opinion, it is not extreme.

Section 3 (3)

[56] The Board considered Section 3 (3) (a) but did not consider the section applicable.

[57] The Board also considered Section 3 (3) (d) as to whether any actions in “8 Mile” promote or encourage criminal acts. The Board considered the drug taking but found that it is not focused upon in the film nor apparently indulged in by Rabbit. It therefore does not normalise or glamorise drug taking as Rabbit is the hero to be emulated. Rabbit is determined to get away from the environment in which he has been raised. One reading of the moral of the story could be that Rabbit does not indulge in drug taking and he therefore has the capacity to escape his former environment and do better for himself.

[58] The arson was not considered by the Board to promote or encourage criminal activity, it was a one-off event, motivated by “civic duty”. The house was an abandoned, condemned eyesore, and the scene of a crime against a child. Although there appeared to be some enjoyment in the act by the participants there was nothing

to show that any of the parties had previously been involved in arson or intended to repeat the act.

[59] There is some concern that viewers may emulate the arson but it is the Board's view that young people of 13 years and above have sufficient maturity to recognise that arson is not an acceptable activity and that there are serious consequences for participants. Rabbit was potentially at risk while upstairs when the fire was started, requiring an escape from a second storey window.

[60] In respect to the violent scenes, as earlier described they are relatively tame, with few observable consequences for the participants. It is the Board's view that teenagers would be able to see that the violence is not real, particularly after access to many more graphic television programmes and videos.

[61] In respect to Section 3 (3) (e) the Board did not find that "8 Mile" promoted any class of person as inherently inferior by reason of any characteristic members of that class as prohibited under Section 21 (1) of the Human Rights Act 1993.

[62] It is the Board's finding that the film did not promote a racial issue but rather there are mixed race groups involved. If anything the film indicates current rap is about class solidarity rather than race.

Section 3 (4)

[63] In respect to Section 3 (4) (a), "8 Mile" is a moralistic film with a conventional story of a hero of overcoming adversity. The dominant effect of the film is of a gritty but uplifting film where Rabbit's self-awareness is empowering and liberating to him.

[64] Sex, violence, and crime are not shown in an excessive or prurient way but are a realistic portrayal of the poor in Detroit.

[65] In respect to the impact of the medium, it is a high energy sound and vision production. The Board found it an excellent realisation of the artist's (viz. Eminem's) work.

[66] The Board considered the character of the publication including merit, value, and importance in relation to artistic, social, cultural, and educational or other matters. The Board finds that "8 Mile" has artistic merit; it is a high quality film by a well

respected American director. It is a revealing view of a sub-culture that we do not normally see. Being unfamiliar with rap culture the Board found the film to be educational in that it provided an insight into that culture.

[67] The film is not innovative in its method but has a consistency that gives it integrity. The film is well targeted to the young teenage market.

[68] In respect to Section 3 (4) (d) the film is targeted to the Eminem supporter market and the general teenage market.

[69] The purpose of the publication is for entertainment and possibly education for those not familiar with rap.

THE BILL OF RIGHTS ACT

[70] In making its decision in respect to “8 Mile” the Board has considered the *Living Word* decision which states:

“The balancing required by Section 3 must be infused by due consideration of the application of the Bill of Rights”.

[71] The Board finds that the decision it has made is the least restrictive available to it, in accordance with the considerations it must have regard to under the various sections of the Act and the Bill of Rights.

[72] In *Moonen 1* the Court of Appeal suggested that it may be helpful to the Board in performing its functions to follow a 5-step process. In a later decision *Moonen v Film & Literature Board of Review* (2002) 2 NZLR 754, 760 (hereinafter referred to as “*Moonen 2*”) the Court of Appeal did, however, emphasize that the 5-step approach was not intended to be prescriptive and that other approaches are open. The Board notes that it does not find the application of the 5-step approach altogether easy, and notes that aspects of the approach would appear to require the Board to make judgements on the consistency with the Bill of Rights of the 1993 Act. The Board further notes that the Court of Appeal did say in *Moonen 1* that the approach was potentially difficult, and that the full Court of the High Court in *Moonen 2* (*Moonen v Film & Literature Board of Review* (No. 2) (2002) NZLR 385, 366) echoed these sentiments saying that

“We have not exactly found the approach easy of practical application”.

[73] The Board would prefer a simpler approach which recognised that interpreting and applying various concepts such as “promotion and support”, “injurious to the public good”, freedom of expression is required to be considered together with the reasonable limits on that freedom that the 1993 Act provides for. In the earlier part of this decision, the Board has emphasised that in classifying this publication it has been conscious of the importance of freedom of expression and has attempted to limit that freedom only to the extent that it is permitted by the 1993 Act, and in a manner that is proportionate to the harm that release of these photographs with an unrestricted classification would cause. Nonetheless, it appears sensible for the Board to continue to utilise the 5-step approach for the present.

[74] In the *Moonen 1* decision the Court of Appeal held that a 5-step approach may assist in reconciling the relevant provisions of the Bill of Rights Act with those of the Classification Act.

[75] The first two steps are to identify the different possible interpretations of the word or words in the Act and if only one meaning is properly open to adopt it. The phrases in s 3 of “promote and support” and “injurious to the public good” have been defined and the Board is bound to apply the definitions of the appropriate words in the sections in the Act, and in case law, and has done so. The Board has defined “exploitation” by way of dictionary definition and applied the definitions in as least restrictive manner as possible. There are no definitions for these terms within the Act or in case law.

[76] Step 3 of *Moonen 1* involves identifying the extent if any to which “the meaning adopted limits” the “relevant right or freedom”. It is acknowledged that the meaning identified in respect to important phrases defined in the Act, in case law and dictionary definition does limit rights and freedoms under the Bill of Rights Act, especially s14. S 14 provides for the right to freedom of expression, including the right to seek, receive and impart information and opinions in any form. This freedom includes the right to produce and view material such as in “8 Mile”. As the Act under which this publication is reviewed is a Classification Act it is acknowledged that it limits the scope of the right of freedom of expression by defining publications objectionable pursuant to s 3 of the Act. The rights of free expression of producers, distributors and viewers are all restricted by the definition of words within the Act and the objectives of the Act. The extent to which these rights are restrictive is commensurate with the type of restriction placed on the film.

[77] The Board is then required to consider whether the extent of such limitation, if found, can be demonstrably justified in a free and democratic society. The objective of the Act is to provide a classification and censorship system in respect to publications, as set out in the long and short titles of the Act. The way in which the objective is achieved must be reasonable in proportion to the importance of the objective, and interfere as little as possible with the right or freedom affected. The Board has had to balance the value of freedom of expression against the need to protect children from certain aspects in “8 Mile”.

[78] Pursuant to the 5th step in *Moonen I* the Board considers the limitations it has placed on “8 Mile” are justified on balance, taking into account the intention of the Act under which the Board is required to make its decision. It is the Board’s view that its decision can be demonstrably justified in a free and democratic society.

[79] The Board has applied the 5-step process from *Moonen I* in each of the decisions made under the various sections of the Act in this decision and notes that the High Court and Court of Appeal have accepted the Board’s second decision in this matter in respect to the five step process.

THE AGE RESTRICTION

[80] It is the Board’s opinion that prohibition of release of “8 Mile” to persons under 13 years of age is justified due to society’s wish to protect young persons from harm yet providing the minimum interference of the rights under the Bill of Rights Act.

[81] The Board cites the comments made in the Board’s decision dated 8 September 2002 in response to the Court of Appeal’s direction to the Board on *Moonen I* (p 10). The Board, in that decision, makes reference to the intent shown by Parliament in passing the Act, to balance the rights of freedom against the need to protect the vulnerable young in society.

“It is clear that the House was well aware of the necessity of considering other rights in this context, particularly the right to freedom of expression, and of achieving an appropriate balance. It is also clear, however, where they considered that that balance should be:

That gets to the heart of this legislation. How does one achieve that balance between on the one hand the rights of people to do what they see fit in the

privacy of their own homes, and on the other hand the greater public good? I think that the answer to that question is that we have to look at the harm that activities, even those ostensibly conducted in private, have the potential to do to innocent victims in particular. I think that for my part I would certainly err on the side of the public good, and if that means at least in a literal sense restricting individual rights, then I think the cause here is so important that we should be prepared to do that.” John Blincoe (1992) NZPD p 12775.

[82] It is the Board’s expert opinion that because of the sexual activity, crime, and violence the film “8 Mile” is likely to be “injurious to the public good’ if available to persons under 13 years of age. The Board considers teenagers 13 years and over have sufficient maturity to put the material to which they will be exposed in the film into perspective, and recognise for instance that the hero Rabbit does not appear to partake in drugs and finds better solutions to violence. The sexual activity is of limited exposure compared to exposure from other sources readily available to teens.

DIFFERING MEDIA

[83] In making its decision the Board has considered the different media “8 Mile” could potentially be released under including DVD and on television.

[84] The Board notes that pursuant to Sections 11 and 26 of the Act the same classification applies to every copy that is identical in content.

[85] In respect to any other relevant circumstances related to the intended or likely use of the publication, the Board does not impose any different restrictions between theatre and non-theatre use. The Board finds that there is no additional harm in the use of DVD, video or similar media to film. There are no scenes that could be lingered on in non-theatrical use which would be “injurious to the public good”, provided the viewers are 13 years of age or over.

[86] Hammond J suggest in his decision in respect to *The Society for the Protection of Community Standards Inc. v Film & Literature Board of Review re Baise-Moi* AP 76/02 Wellington 12 June (2002) that the Board may need to consider the possibility of publications being screened on television. The Board finds that it has no jurisdiction to deal with television screening which is legislated for under the

Broadcasting Act 1989.

DISPLAY CONDITIONS

[87] The Board has considered the conditions of release for “8 Mile” pursuant to Section 27 of the Act and requires the following descriptive note on all publications:

“Contains violence, offensive language, drug use, and sex scenes”.

Dated at Rotorua this 26th day of March 2003

Claudia Elliott
President, Film and Literature Board of Review