

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
Hoyts Distribution (NZ) Ltd
of the film "*The Passion of
The Christ*"

**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. Stephen Stehlin
6. Ani Waaka

Meeting at Wellington on the 15th of March 2004

APPEARANCES

1. Mr David Lane and Mr Mike Petrus for the Society for the Promotion of Community Standards Inc. (hereinafter called "the Society").
2. Owen Davie, Board Secretary, during oral submissions only.
3. Ms Mildenhall, student.

THE FILM

[1] *The Passion of the Christ* is a feature film by Mel Gibson based on the last 12 hours in the life of Jesus Christ.

[2] It is 126 mins in length and is in Aramaic and Latin with English subtitles - although some dialogue (particularly some exchanges by the Roman soldiers during the scourging scene) did not appear to be translated.

[3] Although based on events described in the Gospels of Mathew, Mark, Luke and John, it also has scenes and details not included in these accounts.

[4] The film begins with Jesus praying in the Garden of Gethemane, and follows his arrest, trial, crucifixion and resurrection. Most of the film involves Jesus being beaten and humiliated, with numerous scenes of very graphic violence.

[5] The scenes involving the scourging of Jesus are long and vivid, and likewise, the crucifixion scene depicts in great detail a torturous and brutal procedure.

[6] We also see some of Jesus's earlier life and ministries in a series of flashbacks. These scenes will probably only fully resonate with those familiar with the New Testament.

[7] In parallel with the trial of Jesus is the torment of Judas. After initially betraying Jesus to the authorities for 30 pieces of silver he is hounded by demonic figures, until he is eventually driven to suicide.

[8] Horrific and disturbing images appear throughout the film: next to the image of Judas hanging from a tree is the fly-blown corpse of a camel; children metamorphose into demonic figures; the unrepentant thief crucified with Jesus has an eye pecked out by a raven; an androgynous person (presumably representing Satan) is shown having a worm crawling up his/her nose; the "Satanic" figure is also seen in a couple of scenes carrying a monstrous baby.

THE SUBMISSIONS

THE APPLICANT, HOYTS DISTRIBUTION (NZ) LTD, THE DISTRIBUTOR (HEREAFTER CALLED "HOYTS")

Submission dated 11 March 2003

[9] Hoyts holds exclusive theatrical distribution rights to "*The Passion of The Christ*" for New Zealand.

[10] The classification of the Classification Office of R16 with a descriptive note "*Brutal violence, torture and cruelty*" is too restrictive compared to overseas Christian-based English speaking countries. The classifications for some Christian based English speaking countries are:

Australia	MA15+
USA	R(17)
Ireland	15PG

[11] The above ratings allow persons any age under the stated age limit to attend a screening so long as a parent or guardian accompanies them.

[12] The Chief Film Censor stated in New Zealand Press Association articles "*Classroom applications for an exemption to show the film to under 16's for educational purposes would be considered if a parent's consent was given*".

[13] "*This statement is more in line with the majority of overseas decisions where parental guidance has been the over-riding factor in classifying the film*".

[14] The Board re-classified the film "*Eight Mile*" from R16 to R13. The Board considered the areas of violence, sex, and crime, as well as the Bill of Rights Act.

[15] Refers to the Board's observations in classifying "*Eight Mile*" R13.

[16] "*...persons 13 years of age and upwards today, have sufficient life experience and a moral code that would allow them to view "The Passion of The Christ" and place the violence in context and that this would not be injurious to the public good*".

[17] The Chief Film Censor acknowledges that the story told in this film *“is very familiar to the vast majority of New Zealanders, the more mature of whom will be able to place this presentation of violence in that context”*.

[18] *“This audience should include all secondary school students in New Zealand”*.

[19] The current classification is *“too restrictive, giving undue regard to the depiction of violence levelled against Jesus, a biblical story well known to the vast majority of New Zealanders”*.

[20] Other submissions have asked for a straight R rating, allowing for parental guidance. Should the Board consider using this classification the guidance should read *“R Note: brutal violence, torture and cruelty, restricted to persons 16 years and over unless accompanied by a parent, guardian, religious leader or secondary school teacher”*.

THE SOCIETY

Submission in four parts with two appendices and response to the NZARH submission

Part I – Other Jurisdictions

[21] Refers to the ratings in Australia MA15+, USA (R17) where those under 17 can attend if accompanied by a parent or guardian.

[22] The Australian Office of Film and Literature Classification in its decision of 17 February 2004 noted that *“In relation to these depictions (of “scourging and crucifixion of Jesus”) the overall viewing impact...does not exceed strong”*.

[23] The Chief Censor has regularly highlighted the Ontario Classification Authority as an appropriate model for New Zealand, on the basis of its adherence to human rights issues, and the proper consideration of issues of freedom of expression.

[24] The New Zealand Government Administration Committee, in its review of the Films, Videos, and Publications Classification Act 1993 (hereafter called “the Act”), appears to have taken up the Classification Office submission and states that *“The Government investigate the suitability of the Canadian*

province of Ontario as an “overseas Classification Authority” from which readings could be taken”.

[25] The Ontario Film Review Board classification is 18A (persons under 18 years of age must be accompanied by an adult) – Warnings: Brutal Violence; Gory Scenes.

[26] The Quebec classification is 13 years + (persons under 13 years of age must be accompanied by an adult) with warnings of violence.

[27] The British Columbia classification of 18A (persons under 18 years must be accompanied by an adult) gives a warning: Explicit violence; May Offend Some Religious Groups.

[28] The Alberta classification is 18A with warnings: Brutal and Gory Violence; Disturbing Content: Content elements: (i) frightening depictions of demons; (ii) frequent, intense bloody beatings in a context of ridicule and scorn; (iii) prolonged, detailed portrayal of torture by flogging – bloody wounds; (iv) portrayal of death by crucifixion – broken bones, bloody wounds, intense agony. The classification rationale states “*rated 18A for intense depictions of torture and brutality, mitigated by historical context and reverent tone*”.

[29] Ireland’s censor has issued a 15PG certificate with reasons:

- i) *He did not believe that Mel Gibson’s “purpose was anti-Semitic and the film was not related to “Jewish people in general”.*
- ii) *The film was relevant to people in Ireland but urged caution about its scenes of “explicit cruelty”.*

Part II – Classification Options

[30] Refers to allegedly conflicting statements by the Chief Censor to the media.

[31] The Society seeks an R classification, restricted to persons 16 years and over, but allowing younger children to attend if accompanied by a parent or guardian.

[32] Refers to a similar rating for “*Once Were Warriors*” and 43 other publications which have received this classification.

[33] Six other publications received an R classification, the audience age restricted at 13 years or over, with provision for younger children to view the publication if accompanied by a parent or guardian.

[34] The Society has found common ground with Hoyts and other nation-wide groups including Vision NZ Network, Parenting with Confidence, Catholic Communication, and others “*who have voiced concern over the film’s initial classification*”.

[35] Seeks a classification of R15, which is the same classification as “*Saving Private Ryan*” which contains “*graphic realistic war scenes*”. Described by the retired President of the US MPAA Censorship Authority as a film that should be seen by every American young person, because it would show them the “*cost of our redemption*” as a nation.

[36] Many Christian Church leaders have expressed a similar view with respect to “*The Passion of The Christ*” which depicts “*the cost of the redemption of mankind from the curse, corruption, consequences, and power of sin*”. There is widespread agreement that this is a film that is generally not suitable for those persons younger than 13 years of age because of the “*strong impact of its violence*” despite the significant mitigation of such effects by “*context and reverent tone*”.

Part III

[37] Refers to the Censor’s right under Section 21(1) of the Act to consult.

[38] Notes those consulted as a newly appointed Baptist Pastor, New Zealand Jewish Council, Presbyterian Minister, the Administrator of Wesley Church (a Catholic), and a Jewish Rabbi.

[39] Section 54(1) of the Act gives the Board the right of consultation.

[40] Section 52 requires the Board to re-examine without regard to the decision of the Classification Office.

[41] The Society urges the Board to undertake thorough consultation and involve “*recognised national Christian leaders and those responsible for the spiritual and moral education and guidance of young people (13 - 17) who have seen the film. Such leaders should have the opportunity of making their own submissions which address specific concerns that are of interest to the Board and are relevant to Section 3 of the Act*”.

[42] Comments on the Classification Office consultation process.

[43] Refers to the Chief Censor’s media interviews.

[44] Refers to the role of ravens as a Christian symbol.

[45] Refers to the Society’s press releases in response.

Part IV Matters of Violence, Cruelty and Horror

[46] Is classified by the British Board of Film Classification as a “drama”. “*The film is made using artistic elements designed to convey the deeply spiritual aspects of the drama, e.g. the mental, psychological, physical, and spiritual anguish of the Christ in the Garden of Gethsemane (Mt. 26:36-46; Mk. 14:32-42; Lk. 22:40-46); his spiritual separation of The Christ from his Father on the Cross; the possession of Judas by Satan, etc*”.

[47] Rejects the Chief Censor’s alleged statement on News Talk ZB that the film fits the “*horror*” category. It is irresponsible to claim this film fits the same genre as “*The Exorcist*” and “*Rosemary’s Baby*” as allegedly stated by the Chief Censor.

[48] “*Mel Gibson’s depiction of Christ’s Passion, if anything, according to many scholars, falls far short of communicating the true horror of Christ’s disfigurement, agony, and chastisement, etc, as revealed in the Bible. The Society makes no judgment on such issues other than to acknowledge the right of the film maker to tell the story as he sees fit*”.

[49] Refers to other passages in scripture that predict the intense suffering of Christ for the purpose of expiating sin.

[50] “*The Passion of The Christ*” dramatises “*the most important event to have shaped western civilisation and religious thought. Its spiritual significance is at the centre-stage of*

Christian teaching and it is the mainspring of inspirational western art, literature, philosophy, and music, amongst other things such as Christian social services, etc”.

[51] *“It is not surprising that many who show disdain and contempt towards the Christian message of sacrifice, hope and forgiveness found in Jesus Christ, will try and vilify any attempt to realistically portray the death of Christ, as some sort of “repulsive masochistic fantasy” and deride this film as “a sacred snuff film” (quoting Wiesteltier in The New Republic)”.*

[52] *Disputes Wiesteltier’s use of description of “The Passion of The Christ” being a snuff movie and states “The pained agony of those of Jesus’ followers who witness the events as depicted in the film and deal with in the Gospel accounts, is a clear echo of the pain his followers of today do feel (and give testimony to), recounting and reflecting upon the events of his Passion. It is perverse in the extreme to suggest that a high level of excitability and titillation in the minds of Christians is the intended purpose of this film, or indeed is the result from viewing of this film. No balanced reviewer has suggested this”. Refers again to the comparison with “Saving Private Ryan”.*

[53] *Refers to Robert Ebert who argues that an NC-17 rating would have been automatic if the crucifixion had been of anyone other than Jesus. “Here, he panders to the shallow and misguided insinuations, rarely voiced, that somehow censors are being forced to show a degree of religious favouritism in granting the film its current US classification. It is stating the obvious that a film with over-riding cultural, historical, artistic and religious significance commands a consideration by censors on a different level to a mere “smut movie”. The same argument applies regardless whether or not the central figure is Jesus, or any other highly significant historical person”.*

[54] *“The same arguments advanced in support of the merits of “The Passion” would equally apply to any serious film-making addressing an event involving great violence that has overwhelming merit artistically, historically, etc. Films like “Baise-Moi” and “Irreversible”, that contain unrelenting graphic violence, juxtaposed with brutal and lengthy scenes of sexual violence, are almost universally accepted to have little redeeming artistic, educational or cultural merit. And yet the New Zealand Board of Review saw fit to down-grade the classification of “Baise-Moi” to make it available to general theatre audiences in NZ”.*

[55] *“The Society does not advocate a classification that allows young children to view this film. It accepts that the level of realistic and graphic violence depicted is high, like that of “Saving Private Ryan” and that it should be rated R15. If an R classification was to be issued, the Society argues that a lower floor of 13 years be set under Section 23(2) of the Act, so that only those below the restricted upper floor could attend, but only if accompanied by a parent or guardian”.*

[56] The R15 classification is made following consultation with Hoyts Distribution, Vision NZ Network, Catholic Communication and other groups.

[57] Attaches reviews by Rabbi Daniel Lapin, Michael Medved, and Russell Hittinger and Elizabeth Lev.

Appendix Part 1

[58] Attaches Record of Assistance Section 21 being the Classification Office telephone interviews.

Appendix Part 2

[59] Refers to media statements by the Chief Censor in respect to classroom applications for an exemption to show the film to under 16s for education purposes would be considered if parental consent was given.

[60] Refers to the Society’s media response that gratuitous violence is not the same as historical violence.

[61] Agrees with the Chief Censor’s view that the film does not represent that Jewish people are inherently inferior by reason of their religion and that reasonable members of the public are unlikely to read the film as anti-Semitic.

[62] Refers to the nature of gratuitous violence illustrated by *“Kill Bill Part I”* and interprets its decision that the Board did not find the violence was gratuitous, designed to titillate, excite and amuse.

[63] Refers to the Classification Office view that *“The Passion”* did not fall within Section 3(2) of the Act.

[64] Disputes the Classification Office that “*The violence is graphic and often appears to be gratuitous*” with examples of “*each strike of the nails into his palms (of The Christ) is shown from different angles...including actual piercing of the skin. More often however a spectacle is made of blood and gore resulting from the violence, rather than the manner of infliction*”.

[65] Scholars state that a careful reading of the Gospel will show that Mel Gibson “*has made a genuine attempt to meaningfully depict the events recorded, including the Apostle John’s eye-witness observation that blood and water issued forth from Christ’s side when it was pierced by a soldier (John 19:34)*”.

[66] Refers to the Classification Office reference to “*A spectacle of blood and gore*” suggesting that the scene is included in the film to titillate the audience.

[67] Refers to Biblical reference “*(Zech. 12:10 They shall look on him whom they pierced...)*”. “*The depiction of nails used in the crucifixion is an accurate portrayal of the historical account*”.

[68] Disputes the Classification Office comments about the scourging and states “*The scourging as depicted, which the movie seems to place it in the context of John’s Gospel rather than of the Synoptics, has been criticised by some reviewers as without historical support and grossly overdone, even if it did take place*”. The suggestion is that its depiction is gratuitous is not accepted. The Society disagrees and suggests that the Board carefully consider the following:

- i) Roman scourgings were more severe than Jewish ones. Roman citizenship carried with it an exemption from being flogged. Scourging was implemented to lessen the time on the cross. Refers to the Apostle Paul. Jesus warned his followers that he would soon be turned over to the Romans to be “*mocked, scourged, and crucified*”. Pilate wanted to flog Jesus and then release him but the Jewish leaders would not agree to anything less than the death sentence. As a prelude to the crucifixion Jesus was taken into an enclosed courtyard, away from the Jews, and stripped and scourged in Roman manner. Saint Augustine concluded that since every sinner deserves many blows Christ, as the bearer of all Christian sins,

must have received an unaccountable number of strikes. Jesus was beaten so severely that he fell several times on his journey to Calvary and finally had to allow Simon the Cyrenian to carry his cross for him.

[69] Disputes the Classification Office statement that “*The historical setting in which this violence takes place has little direct relevance to a modern audience*”. This could induce a level of detachment, even amongst those familiar with the story. This conflicts with the earlier statement “*The story told in this film is very familiar to the vast majority of New Zealanders, the more mature of whom will be able to place this presentation of violence in that context*”. This appears to be in conflict.

[70] The maturity of a young person aged 13 years and older has been addressed in the film “*Eight Mile*”.

[71] The Board makes judgements about “*the moral code*” yet the Act does not mention morality. “*Both censorship bodies have also justified the high levels of gratuitous violence in films like “Baise-Moi” by suggesting that they are “morality tales”. Could it be possible that “The Passion” has a moral message?*”

Late Submissions

[72] The Society forwarded further submissions to the Board three days after the hearing of oral submissions by the Board. Late submissions are not acceptable in these circumstances and have not been considered in the decision.

Response to Submission by New Zealand Association of Rationalists and Humanists

[73] Disputes that SPCS or Vision Network have been “*working with Hoyts Distribution in terms of reviewing the classification*”.

[74] Neither the Society nor Vision Network has stated that “*they want the classification lowered so the film can be used to promote Christianity to young teenagers*”.

[75] The Society does not assert that the merit of the message is associated with the want to promote Christianity. The

message of the film is one aspect which must be taken into account in Section 3(3) of the Act.

SUBMISSION OF THE OFFICE OF FILM & LITERATURE CLASSIFICATION (HEREINAFTER CALLED “THE CLASSIFICATION OFFICE”)

Dated 11 March 2004

[76] Is making its submission without the benefit of the applicant’s submission or parts 3, 4, and appendix part 2 of the Society’s submission.

[77] Refers to Section 52(2) of the Act.

Description of the Film and Application of Section 3

[78] Describes the film, states *“The story is derived partly from the accounts of the Apostles Mark, Matthew, Luke and John. It also contains events not found in those accounts...Most of the film, however, focuses on his scourging, his enforced passage through the streets and his crucifixion...Satan is frequently shown passing through crowds, observing and taunting Jesus, sometimes carrying a hideous child. Many presentations contain strong Roman Catholic symbolism. All dialogue is spoken in Aramaic and Latin. English sub-titles are used, but do not appear to interpret everything said”*.

[79] *“The film fits through the “horror, cruelty and violence” subject matter gateways of Section 3(1)”*.

[80] *“Horror is occasionally conveyed through images of gargoyle-like demons associated with Satan, and eerie sound effects, lighting and music. In one scene, possessed children harass and pursue Judas Iscariot. A demon is shown lunging at him. Judas is eventually shown hanging himself from a tree beside a fly-blown, rotting camel corpse. Satan is shown to produce a snake, to have a worm in his nose, and is last seen screeching in a barren, supernatural landscape when Jesus is dead. While these presentations are frightening and likely to upset children, they are presented in the manner of the horror genre and will be recognised as such by adults. They also detract from any claims to historical accuracy the film makes. More viewers are likely to be horrified by the graphic violence...”*.

[81] Section 3(2) does not apply.

[82] Section 3(3)(a)(1) applies... *“From the moment of his arrest Jesus is assaulted, tortured and humiliated. At times it seems that he is walloped by every passer-by. Most of the brutality is contained in three segments of approximately 20 minute each”*.

[83] *“In the first segment Jesus is caned and scourged with a cat-o-nine tails with hooks and blades attached. In the most horrifying sequence the hooks and blades of this instrument of torture stick into his flesh before being ripped away for a new blow. His body is torn and bloodied by numerous repeated blows. The guards count each stroke. The impact of the blows was conveyed by the resulting bloody lacerations that cover the back, legs and chest of Jesus. The graphic impact is often interspersed of cutaway shots of horrified onlookers, Jesus’ anguished expressions and the swinging arms of the powerful and leering guards...”*.

[84] *“The second segment begins with Roman soldiers hammering a crown of thorns on to Jesus’ head and taunting him before he is forced to carry a heavy cross through the streets accompanied by two other convicts and numerous Roman guards. On the way he is stoned and berated by onlookers. In this segment the cruelty of the guards is emphasised as he is repeatedly whipped as he stumbles along the route. Their cruelty is partly off-set by the introduction of sympathetic characters, such as Simon of Cyrene, who helps carry the heavy wooden cross, and a woman who wipes the blood from his face”*.

[85] *“The third segment depicts in detail the crucifixion process. The nails are shown in close-up, hammered into his left palm. His shoulder is then pulled from his socket when his right arm is stretched to hammer nails into his right hand. His ankles are impaled before the cross is turned over to flatten the nails on the other side of the wood. Jesus’ weight would be pulling his body from the three nails before being pressed into the ground by the cross. Spurts of blood and Jesus’ agony are shown throughout the scene. The three crosses are then raised. The previously passive Jesus is now more articulate. The convict to Jesus’ left is promised entry to Heaven but the convict to his right has his eyes eaten out by a raven. This segment is of significant intensity to the preceding scenes, but contains more religious imagery than the others. Mary, Mary Magdalene, John*

Caiaphas and Satan are shown to be present at various times throughout these segments”.

[86] *In respect to Section 3(4) “The film is a provocative and gory focus on the persecution and suffering of Christ. It cannot be said to represent how all Christians view the crucifixion of Jesus, but it does obviously represent the view of its maker. The dominant effect of this film will vary from audience to audience. Some will undoubtedly have their Christian faith re-affirmed, others will be repulsed by the graphic depictions of torture and brutal violence, still others will bemoan how little of Jesus’ teachings and how much of his suffering is shown. Its effect on children and teenagers is likely to be disturbing and possibly traumatising”.*

[87] *“How something is depicted in any given film is much more important than whether or not the depiction is historically accurate. Historical accuracy and importance as censorship criteria are sufficiently uncertain to be of limited use in classification, but if argued, should be argued consistently...With varying degrees of success, older teenagers, adults, and those possessing theological and historical knowledge will be able to place these depictions of violence into their historical and religious context”.*

[88] *“The extent and degree and the manner in which violence is presented in this film would place it squarely alongside other films the Office customarily classifies R18. The Office submits that the availability of this film is like to injure the public good by disturbing and traumatising children, teenagers, and those without the knowledge required to place the depictions of extreme violence in their historical and theological context. Exposure to this level of brutality is also likely to contribute to the de-sensitisation of impressionable young minds to violence.*

[89] *On the other hand, unlike most other films containing this level of violence, this film only depicts violence against a single person. Unlike most other films, the story told in this film is very familiar to the vast majority of New Zealanders, the more mature of whom will be able to place this presentation of violence in that context. The historical setting in which this violence takes place has little relevance to a modern audience. This could induce a level of detachment even amongst those few who are unfamiliar with this story. And there are few who would find the depictions of violence anything but repulsive. The film cannot be said to be entertainment in the ordinary sense of the word”.*

Classification

[90] The availability of the publication is unlikely to be “*injurious to the public good*” if it is restricted to an audience aged 16 or 18 years or over “*depending on the degree to which the Board feels the religious and historical context of the film reduces the impact of the violence on audiences. A classification below 16 would set a new benchmark for depictions of violence permitted in films on general release exceeding that established by “Saving Private Ryan”. A classification below 16 could also be seen to privilege one religion ahead of others on the basis that the film’s depictions are historically accurate, a basis that is in fact contested. In this instance a classification of 16 or 18 represents minimum interference with the freedom of expression consistent with preventing injury to the public good*”.

[91] Sets out the film’s overseas classifications:

A. Jurisdictions requiring accompaniment for persons below a certain age:

Canada (except Quebec) 18A (Persons younger than 18 years must be accompanied by an adult. Note: Brutal violence; Gory scenes).

USA R (Under 17 requires accompanying parent or adult guardian. Note: Sequences of graphic violence).

Ireland 15PG (While the film is, in the opinion of the Censor, suitable only for people over 15 years of age, a person under that age may be admitted to see this film if he or she is accompanied by a parent or guardian. Note: Explicit cruelty).

Australia MA15+ (Persons under the age of 15 must be accompanied by a parent or adult guardian. Note: Graphic violence).

B. Jurisdictions forbidding persons below a certain age:

United Kingdom 18 (No-one younger than 18 may see an 18 film in a cinema. No-one younger

than 18 may rent or buy an 18 rated video. Note: Contains extended scenes of strong violence).

New Zealand R16 (Restricted to persons 16 years and over. Note: Brutal violence, torture and cruelty).

Netherlands 16 (Not for children and young people under 16. Note: Violence and fear).

Quebec 16 (le film ne peut être vu, acheté ou loué que par des personnes de 16 ans et plus. Note: Violence).

Germany 16 (Freigegeben ab 16 (sechzehn) Jahren).

[92] The Society is not correct in the Quebec classification.

[93] “*The Passion of The Christ*” has received mixed reviews.

A General “accompanied child” classification or a specific exemption

[94] The applicant and the Society appear to argue for a restriction below R16. The Society variously arguing that no-one under 16 be admitted unless accompanied by a parent or guardian, R15 restricted to persons 15 years of age and over, and R13 restricted to persons 13 years of age and over.

[95] “*The Office submits that if the Board finds that the film is likely to injure the public good by disturbing or traumatising children or young persons, then the Board should consider how the presence of someone 18 years of age or over viewing the film with a child or young person will address that injury. Even if the Board feels the presence of an older person will address that injury, the Board will have to find words that will sufficiently warn, in advance, parents or older friends and siblings about the nature of the repeated and extreme violence that they were about to take their children or young friends and siblings to view*”.

[96] “*The Office submits that an R classification, that is allowing children and young persons to view the film with an older person, is inadequate because it has no floor*”.

[97] “Section 44 of the Act allows anyone to apply for an exemption from the provisions of the Act in respect to the publication”. On receiving such an application, the Office may exempt a person or a class of persons from the provisions of the Act with respect to the publication, after taking into account the matters in Section 3, and if it is satisfied that the publication should be made available for educational or other purposes.

**THE MEDIA OFFICE OF THE NEW ZEALAND
CATHOLIC BISHOPS CONFERENCE**

Submission dated 9 March 2004

[98] The classification should be lowered to R15.

[99] “...there is no Catholic Church position on this film per se, many of the educators and parents whom we have consulted felt that in the context of religious studies in a Catholic school, secondary school students in Year Eleven would have the maturity to view this film if their parents were happy for them to do so”.

[100] Year Eleven includes 15 and 16 year olds and the current rating would mean many Year Eleven students would not be able to join their classmates who had already had their 16th birthdays.

[101] “A Year Eleven class that was taken to see this movie they would do so in the context of that level’s religious studies programme, which would include appropriate study guides and discussion”.

[102] “For those whose Christian faith is an important part of their life, the film is viewed in a different perspective and context from that of a non-Christian viewer”.

[103] “The Christian faith is founded upon a personal relationship with Jesus Christ and a conscious decision to follow his teachings and his example of love and forgiveness. It is Jesus’ fidelity to the will of his father that is at the very heart of his life and mission. Part of the fidelity is his submission to the ultimate sacrifice of suffering and death, rather than retract his message of love and forgiveness”.

[104] “Young people in Christian schools have from their earliest years developed an understanding of the mission of Jesus and have been exposed to accounts of his passion and

death as part of the liturgy of the Church. This is particularly so during Lent. So for the Christian of any age, the story of Christ's suffering is only a part of the story which culminates in his resurrection – the cornerstone of the Christian faith”.

THE NEW ZEALAND ASSOCIATION OF RATIONALISTS AND HUMANISTS (INC.) (HEREINAFTER CALLED “NZARH”)

[105] Opposes the appeal by Hoyts against the decision of the Chief Censor to classify “*The Passion of The Christ*” as R16.

[106] “*NZARH represents non-religious people in New Zealand. Our stated aims and objectives are: (a) to advocate a rational, humane and secular view of life without reference to supernatural agencies which is compatible with the scientific method; (b) to promote a tolerant, responsible and open society; (c) to encourage open-minded enquiry into matters relevant to human co-existence and well-being”.*

[107] Two members of the council of NZARH, including the author of this submission, have seen the film.

[108] Are concerned that the appeal by Hoyts is “*an attempt to have the normal standards of film classification suspended so that teenagers between the ages of 13 and 16 will be exposed to scenes that they would not normally be permitted to see in a film”.*

[109] There is a presumption that the motives of Hoyts are commercial in working with the Society and Vision Network, who have stated that they want the classification lowered so the film can be used to promote Christianity to young teenagers. “*The promotion of religion is not in itself objectionable but we contend that it does not merit the risk of harm that showing this film to young teenagers will entail”.*

[110] “*The Chief Censor’s decision to restrict the film rating to people over the age of 16 was largely based on the violence depicted in the film. We agree with this decision: the film graphically depicts extreme and prolonged acts of violence against one man”.*

[111] These scenes cannot be defended on the grounds of (a) *Historical accuracy* “*Biblical scholars have established that the Gospels were written some time after the events they described are purported to have happened, the earliest Gospel being*

written at least 30 years later...historians do not regard the Gospel as an historically accurate set of documents. Given that the authenticity of events and characters in the Gospels are unsubstantiated, the film cannot be defended on the grounds that it accurately depicts historical events". (b) *Biblical accuracy* "The film might be defended on the ground that it truthfully depicts events as they are described in the Bible. However, there are four separate accounts of Christ's trial and execution in each of the four Gospels and, while they follow broadly the same course of events, they differ in details of incident and dialogue. The different accounts contradict one another in several areas: for example, all the Gospels say that Jesus Christ was crucified between two thieves. The Gospels of Mark and John say nothing about them, Matthew says both mock Christ, while Luke says one of the thieves mocks Christ but the other accepts him as Messiah. Anyone creating a story of Christ must either choose to follow one Gospel and ignore the others or construct a narrative by selecting incidents and dialogues from each of the four Gospels. In *The Passion*, the director chooses to depict Luke's account of the reaction of the thieves, but other parts of the narrative are taken from other Gospels. The screenplay is a synthesis of the four stories and the events depicted cannot be justified simply on the grounds that they are in the Bible, as there are different accounts which could have been chosen".

[112] The film includes many events that are not taken from the Gospel and derive from medieval legends and renaissance art. The scene where Christ carries his cross to the site of his crucifixion cannot be found in the Bible but are familiar from traditional stories which were created to embellish the biblical narrative. The director has chosen to include them in the film.

[113] Other incidents appear to be the invention of the director, including some of the most disturbing images in the film such as the various appearances of Satan, the diabolic children who hound Judas and the raven which plucks out the eye of the thief who mocks Christ.

[114] Seriousness of purpose: Advocates for lowering the classification have argued the film should be shown to children because its message is important. Christians have many resources to proselytise their faith, including film, without exposing children to extreme violence. A comparison is made with "*Schindlers List*" a film which "*depicts actual events and has a serious purpose: To educate its viewers about the holocaust and so prevent its reoccurrence*". The violence in this film is shocking but less graphic than in "*The Passion*".

“*Schindlers List*” was classified as R16. Similar comments could be made about “*The Pianist*”, rated R15.

[115] Anti-Semitism “*Whether or not the film is anti Semitic in intent, we think it could incite hatred against Jews and their religion, a potential which should have been given weight in the Chief Censor’s decision. We saw the following incidents:*

(a) *There are few Jewish characters in the film who are treated sympathetically. Other than Jesus Christ’s followers, the only characters to show kindness to Christ are Simon of Cyrene and Saint Veronica. Moreover it is not their kindness that is emphasised, but their conversion to belief in Christ as Messiah. Simon, as related in the Gospel of Matthew, is forced to help Christ bear his cross. In the film, he initially objects but is moved by Christ’s fortitude. Saint Veronica is a figure of legend. Traditionally she offers Christ a towel on which he leaves an imprint of his face; in the film however, she uses her veil to take some of his blood, an action which suggests the rite of the Eucharist rather than an act of charity. The film also shows some women who wail as Christ goes to the cross, but their sympathy is not shared by the majority of bystanders, who taunt and abuse him. Throughout the film the Jews of Jerusalem are shown as hostile to Christ, except in the flashback to his entry into the city.*

(b) *The film emphasises the role of the Sandrehin (the Jewish council of priests) and their high priest Caiaphas in Christ’s fate. In some respects this depiction goes beyond the text of the Gospels: when Christ is brought before Caiaphas two members of the Sandrehin object to his arrest but they are roughly ejected from the assembly by the mob which has gathered to watch the inquisition. Throughout the film, the Sandrehin are shown as worldly and political, in contrast to Christ and his followers. It is clear that they represent the old religion of Judaism which has been supplanted by the new faith in Christ: in the penultimate scene of the film, they are shown in the Temple as it is destroyed by earthquake, while gentile Roman soldiers pray before Christ’s body. In this respect the film represents the Jewish religion as inferior to belief in Christ”.*

(c) *By contrast the Roman authorities are treated sympathetically. The biblical narrative of Pilate trying to have Christ spared is recounted and elaborated upon.*

The characterisation of Pilate is one of the most sympathetic characterisations in the film, contrary to historical evidence. He is shown as a troubled man who wants to understand Christ and save him from his fate, but eventually gives in to his fears of unrest among the Jews. He criticises the Sandrehin for having beaten Christ before his trial; he offers Christ wine and stipulates that his punishment by scourging should be severe in order to placate the Jews, but not lethal. Pilate's wife Claudia is mentioned only in passing in the Gospels; but in the film she is developed into a character who is deeply affected by the suffering of Christ. Finally, although the Roman common soldiers torture and abuse Christ, their superiors seem concerned for his welfare. Pilate's adjutant intervenes to lessen his suffering on several occasions.

(d) Contrary to the Chief Censor's report we found the most inflammatory verses from the Gospels were included in the film. The film included Christ's words to Pilate when he is sentenced to crucifixion "thou couldest have no power at all against me except it were given thee from above: therefore he that delivered me unto thee hath the greater sin" which historically was used to justify anti-Semitism. Contrary to the Chief Censor's report the crowds response to Christ's condemnation "His blood be on us, and on our children" is included in the dialogue, although it is not sub-titled. Mel Gibson admitted as much in his television interview with Dianne Sawyer shown on New Zealand television.

(e) The character of Jesus Christ in the film does not look Jewish. He is tall and blue-eyed, in contrast to the rather swarthy Jewish characters, mostly played by Italians. It is traditional in Christian art to represent him so but it does not fit with a film which claims historical accuracy. This depiction sets Christ apart from the Jews.

(f) Christ's Jewish background is ignored and the film makes no reference to those passages in the Gospel where Christ acknowledges the Old Testament scriptures.

(g) The Gospels are anti-Semitic and pro-Roman. They were written by men who wanted to show that Christianity had superseded the Jewish Covenant with God and who wanted to promote their new religion among the peoples

of the Roman Empire. Their writings do not have a good word to say about the Jewish religion”.

[116] The film is already being used by anti-Semites to incite hatred against Jews. The Anti-Defamation League lists several incidents, including a quote by James Wickstrom of the White Supremacist Christian Identity Organisation “*This movie is going to expose the jew [sic] to the world as the devious, sinister, sons and daughters of Satan they truly are! I am certain that we shall see an increase of widespread repercussions against this evil, parasitic menace that lives among us*”.

[117] Anti-Semitism appears to be increasing in many parts of the world according to reports from sources such as The Economist “*New Zealand is fortunate to be one of the least anti-Semitic countries in the world but there are organisations and individuals with anti-Semitic tendencies*”. A report by the Institute for Jewish Policy Research in 1996 on the extent of anti-Semitism in New Zealand observed that “*A small number of activists involved in fundamental churches and sects have continued to express anti-Semitic sentiments through publications and sermons*”. That said the report concluded that “*When anti-Semitism does occur in the public arena, it tends to receive a robust critical response*”.

[118] In the course of researching this submission some locally produced fundamentalist publications were found with an anti-Semitic bias.

[119] “*The fact that anti-Semitism is rare in this country and that our Jewish population is small in number could make New Zealand teenagers especially vulnerable to the sentiments of this film. Having had little experience of anti-Semitism and being unlikely to have ever met a Jew, teenagers will have no point of comparison. This is particularly true of teenagers from Fundamentalist families, who might only know about Judaism from a Biblical perspective*”.

[120] “*In making this submission, we find ourselves in an unusual position. In most ethical debates, particularly those involving censorship, we were normally on the liberal side of the argument, while groups such as SPCS favour restriction. However, as Rationalists and Humanists we object to special licence being given to a film because of its religious content and we are concerned for the welfare of young people. We are also aware that the enthusiasts for this film appear to give no recognition to any of the sensitivities it has provoked. When we*

viewed the film, we were handed a booklet as we were leaving the theatre; it did not attempt to address the issues of violence and anti-Semitism or provide any historical context, but merely sought the reader's conversion to Christianity. Equally, the film's official web sites provide nothing but promotional materials. Given the film's prolonged and detailed depictions of torture, as well as its denigration of another religion, we find the attitude of the film's makers and promoters to be at least irresponsible, at worst callous. This is not a film suitable for young teenagers and it is being promoted by people who do not care what harm they do in their search for converts".

VISION NETWORK OF NEW ZEALAND

Submission dated 11 March 2004

[121] Has *"about 350 members – mainly churches and Christian organisations"*.

[122] Seek rating be R *"allowing young people aged 13 – 15 years to go to the film if accompanied by a parent or guardian"*.

[123] In the alternative seek an R15 rating.

[124] The film is of huge significance to the Christian community and others.

[125] The rating in New Zealand is out of step with Canada, America, Ireland, England, and Australia, which allow children to attend if accompanied by a parent or guardian.

[126] The rating is out of step with other films without the key redeeming feature of the historical and spiritual significance of *"The Passion"*.

[127] *"Because of this significance, New Zealand parents and guardians should be given some flexibility in making judgements with respect to those in their care under the age of 16"*.

Form Submissions supporting existing classification

[128] A number of form objections were received stating *"I support the existing classification of the film "The Passion of The Christ" distributed by Hoyts Cinemas and ask that it remain at R16. I believe that the present rating is correct, given the*

level of horror, cruelty, and violence depicted in the film". Similar submissions were received from Helen Mackie, Lawrence Cornish, Daphne-Anne Freeke, Lester Fensom, Barbara Dennett, Stanley Day, Deborah Taylor, Paul Shirley, Errol James, Christine Runciman, Mr and Mrs Lawrence and family, and Pastor Geoff MacPherson.

OTHER SUBMISSIONS

[129] Further submissions which supported the current R16 rating are from:

1. Robert Posthower:

- i) Supports the R16 rating.
- ii) It is not based on the Gospel, the violence depicted is totally beyond what is mentioned and the content from the Scriptures.
- iii) *"The Passion"* best typifies what occurs as the norm in other Mel Gibson movies.
- iv) The so-called Christian label should be no excuse to lower the rating.

2. Paula Lindsay-Dutch:

- i) Has seen the film.
- ii) It is very violent and unsuitable for children under 16 years.
- iii) Asked Hoyts Cinema staff if children were allowed to see the film with an adult. Was told by two staff members it is very violent and unsuitable for children. Both staff had seen the film.

FURTHER SUBMISSIONS WHICH DO NOT SUPPORT THE CURRENT RATING ARE:

1. Bruce Collingwood:

- i) Is amazed that children have unrestricted access to Harry Potter films, *"which are blatantly advocating and progressively training people in the black spiritual act of witchcraft"*.
- ii) That they can watch soaps on tv that *"promote uncommitted relationships, bed-hopping, and sexually perverted lifestyles regularly and yet The*

Passion of The Christ, which is a movie based on historical fact, is given an R16 rating. Something seems very wrong to me about that. The powers that be obviously seem to think that violence is worse than witchcraft? Wrong!!

- iii) *“As a Christian parent I want my children to see what Jesus Christ did for each of us, graphic violence or not. It is factually accurate”.*
- iv) In regards to violence, many recent war movies show violence and death, but it is helped to understand the reality of these people’s story and what actually happened in history. *“This is a good thing so that us future generations know the truth”.*
- v) Censorship must be consistent *“so that all morally damaging content is censored equally”.*
- vi) The film was *“not created for pure entertainment. The violence depicted is not just sick entertainment, it was created to purposely impact people with an eternal message, truth, and to those who don’t believe that Jesus was the son of God, a gruesome historical fact that many people don’t really have any real understanding of and need to understand”.*
- vii) Parents should be able to make their own decision as to whether they want their children to see such a film.

2. Tim Cooper:

- i) Has a PhD in History and is currently the Pastor of a Church. Is making this submission in his personal capacity.
- ii) Limits the scope of his comments to the theological significance of the events depicted in the movie. It is *“almost impossible to overstate the importance of the death and resurrection of Jesus Christ to the Christian faith. It stands at the centre. Take that away and there is nothing left”.*
- iii) *“For almost 2000 years the celebration of communion has been a regular reaffirmation of this story”.*
- iv) *“The crucifixion and resurrection of Christ stand at the centre of the Bible”.*
- v) As early as Genesis 4, in the story of Cain and Abel, God looked with favour on Abel’s sacrifice

- because a life had been given. *“Blood had been shed”*.
- vi) *“The various sacrifices instituted along with the Ten Commandments given through Moses enshrine the same principle...the people of Israel were learning through this system of sacrifices that their sin could be forgiven only if a life was given in their place”*.
 - vii) *“In my opinion the physical sufferings of Christ portray the unseen spiritual sufferings as Christ took on himself the judgment of God for the sin of men and women...it was important that the manner of his death conveyed the full horror and agony of the spiritual suffering he endured, unseen, on the cross. In portraying that deeper agony, crucifixion did it well”. “The Passion of The Christ” adequately conveys the intensity of the suffering of Christ. It is not tame but it is rugged and plausible. “The story that lies at the heart of the Christian faith has been vividly brought to life on the screen. For this reason, it is a tremendously important movie”*.
 - viii) *“It might be said that the movie gives too much time and detail to the flogging of Christ before his crucifixion. There may be something in this”. On Gospel account “Its just possible that the film doesn’t go far enough”. “I would say that the movie is consistent with the Biblical account. There are some ways in which it goes beyond it, but it does not go against it. It is, I believe, a realistic portrayal of what Christ endured. That suffering is vital to the Christian faith. It is a story that must be told. In my opinion, this movie tells it well”*.

APPLICABLE LEGISLATION

[130] In making its decision the Board is bound by the Act. The applicable sections in numerical order are:

- 3. Meaning of “objectionable”** —(1) For the purposes of this Act, a publication is objectionable if it describes, depicts, expresses, or otherwise deals with matters 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)

21. Other assistance- (1) In examining any publication for the purposes of this Part of this Act, the Classification Office may show the publication to any person whom the Classification Office considers may be able to assist the Office in forming an opinion of the

publication on which to base the decision of the Classification Office in respect of the publication.

32. Excisions from and alterations to films –

Notwithstanding anything in section 23 of this Act, if, after examining a film under this Part of this Act (other than a film referred to it pursuant to section 29(1) or section 41(3) of this Act), the Classification Office is of the opinion that it would classify the film differently according to whether any specified part or parts of the film are excised from or left in the film, it shall, before making a final determination in respect of the classification of the film, follow the procedure prescribed by section 33 of this Act.

Cf. 1983, No. 130, s. 15 (3); 1987, No. 85, s. 24 (1)

52. Conduct of reviews – (2) Every review under this Part of this Act shall be by way of re-examination of the publication by the Board without regard to the decision of the Classification Office.

54. Consultation – (1) For the purposes of any review under this part of this Act, the Board shall have the same power to consult any person (including the Classification Office), invite written submissions, obtain information, and make inquiries as is conferred on the Classification Office by section 21 of this Act.

The New Zealand Bill of Rights Act 1990

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

4. Other enactment’s 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.

14. Freedom of expression – Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.

Human Rights Act 1993

[132] The following sections of the New Zealand Human Rights Act 1993 (hereafter called “the Human Rights Act”) apply:

21. Prohibited grounds of discrimination – (1) For the purposes of this Act, the prohibited grounds of discrimination are...

- (c) Religious belief:
- (d) Ethical belief, which means the lack of a religious belief, whether in respect of a particular religion or religions or all religions:
- (f) Race:
- (g) Ethnic or national origins, which includes nationality or citizenship:

THE DECISION

[133] The Board unanimously holds the publication “*The Passion of The Christ*” to be objectionable except if the availability of the publication is limited to persons who have attained the age of 15 years. The classification is to apply to all identical formats of the publication including film, video, and DVD.

Section 3(1)

[134] The Board finds that the film “*The Passion of The Christ*” passes through the “gateways” of cruelty, violence, and horror, in that it “*describes, depicts or expresses, or otherwise deals*

with” those matters in such a manner that the unrestricted availability of the publication is likely to be “*injurious to the public good*”. This is pursuant to Section 3(1) of the Act.

[135] 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 passed through one of the “gateways” and then consider if it was likely to be “*injurious to the public good*”.

[136] The Act does not define the phrase “*injurious to the public good*” so case law is relied upon to assist

[137] 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 p 409 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”.

[138] 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.”

[139] The Board finds the unrestricted availability of “*The Passion of The Christ*” to be objectionable in terms of Section 3(1) of the Act in that there are scenes of horror when the demon rushes at Judas, and when the two children turn into demons.

[140] The Board considered crime as a gateway issue. It is difficult to tell what the legal status of scourging and crucifixion was historically but as they were State imposed punishments one can only assume legality. It appears, on the information in the film, that historically blasphemy was a crime, but it was not established in the film that blasphemy had in fact occurred. The “gateway” in respect to crime is therefore not reached.

[141] The scenes involving cruelty and violence are inter-linked. Cruelty and violence dominate the movie and is, at times, relentless. The scourging scene is particularly savage and arguably reaches its peak in the grabbing and ripping of flesh with the scourge. There are a number of other incidents of cruelty and violence throughout the film. When the cross is turned over roughly while Jesus is attached to it, his face tells of the pain he suffers. During the crucifixion, particularly when the nails were hammered into the left palm and the right shoulder is dislocated to assist in the nailing, the cruelty and violence is extreme. At times during the crucifixion scene the photography cuts away to reaction shots. The lengthy process when Jesus walks up to the crucifixion site at Calvary, while the Roman soldiers and others beat him, shows extreme violence and cruelty beyond ordinary human endurance.

[142] Section 3(1) requires the “gateway” matters to be either “described, depicted, or expressed or otherwise dealt with”. The Board finds that there are numerous depictions of the “gateway” matters of violence and cruelty and a lesser number of horror, as described in the preceding paragraphs. The incidents are of significant magnitude and are likely to be “injurious to the public good” unless restricted to an audience 15 years of age and above.

Section 3(2)

[143] As the Board finds that the threshold in Section 3(1) has been met, it must then consider Section 3(2) of the Act as to whether the activities in that Section exist in the publication. The Board must then consider whether the publication “promotes or supports or tends to promote or support” those activities.

[144] The phrase “promotes or supports or tends to promote or support” is not defined in the Act. The decision of *Moonen v Film & Literature Board of Review* (2000) 2 NZLR 9 (hereinafter called “*Moonen I*”) assists by defining the words “promotes or supports”. The decision states that “description” and “depiction” of a prohibited activity do not of themselves necessarily amount to promotion or support of that activity.

There must be something about the way the prohibited activity is “*described, depicted or otherwise dealt with*”, which can fairly be said to have the effect of “*promoting or supporting*” that activity.

[145] The Board finds that Section 3(2)(f) applies in that there is torture and the infliction of extreme violence or extreme cruelty in the scourging and crucifixion scenes.

[146] “Torture” is not defined with the Act and therefore the Board has applied the Concise Oxford Dictionary definition of “*torture*”, being “*infliction of severe bodily pain, e.g. as punishment or means of persuasion*”.

[147] Having found that Section 3(2)(f) applies the Board must then consider whether the film “*promotes or supports or tends to promote or support acts of torture or the infliction of extreme violence or extreme cruelty*”.

[148] The Board does not find anything within “*The Passion of The Christ*” which “*promotes or supports or tends to promote or support*” the acts of “*torture or infliction of extreme violence or extreme cruelty*”. There is significant sympathy shown on the faces of the crowd for Jesus as victim of the acts of “*torture, violence and cruelty*”. Pilate attempts initially to subvert the crucifixion. The Roman soldiers who are inflicting the punishment are callous and laughing and are not, in the Board’s expert opinion, promoted as characters to emulate or admire. The soldiers’ superiors attempt to mitigate the damage inflicted by their subordinates, showing to some extent they do not approve of the soldiers’ actions.

[149] The Board finds that Section 3(2) of the Act does not apply as the film does not “*promote or support or tend to promote or support acts of torture or the infliction of extreme violence or extreme cruelty*”.

Section 3(3)

[150] The Board considers there are features within “*The Passion of The Christ*” which “*describe, depict, or otherwise deal with*” the matters in Section 3(3)(a)(i) of the Act, being acts of “*torture, the infliction of serious physical harm or acts of significant cruelty*”. The particular scenes involving torture, serious physical harm, and significant cruelty, are a major part of the film and include the scourging, the scene where Jesus is

made to carry the cross to the crucifixion site at Calvary, and the crucifixion itself.

[151] The Board finds that the “*extent*” (defined in the Concise Oxford Dictionary as “*with or limits of application*”) and “*degree*” (defined in the Concise Oxford Dictionary as “*ascending or descending scale or process*”) to which these activities are portrayed in the film is significant.

[152] For approximately 60 minutes there is almost relentless violence, extensive prolonged torture, particularly in the scourging, the placing of the crown of thorns, the journey to the crucifixion site, and the crucifixion. The few flash-backs give some respite. The extent in which “*torture, the infliction of serious physical harm, or acts of significant cruelty*” is therefore significant, and the degree high to which these activities are portrayed in the film.

[153] In respect to Section 3(3)(c) the Board finds that there are scenes in the film which “*degrade or dehumanise or demean*”.

[154] None of the phrases “*degrade, dehumanise, or demean*” have been defined in the Act and therefore the Board has applied the Concise Oxford Dictionary definition of all three. To “*dehumanise*” is defined as “*divest of human characteristics; make impersonal or machine-like*”. The term “*demean*” is defined as to “*lower the dignity of*”. To “*degrade*” is defined as “*to bring into dishonour or contempt*”.

[155] There are a number of examples of “*degrading, dehumanising or demeaning*” actions within the film. When Jesus is spat at and verbally tormented it is “*degrading*”. The Board finds Jesus is “*demeaned*” in the film by, for instance, being called the “*King of the worms*”. Jesus is further “*demeaned*” by the placing of the crown of thorns. It is perhaps a matter of interpretation as to whether the activities of the crucifixion and the carrying of the cross treat Jesus more like an animal, or a beast of burden, than a person, thereby dehumanising him.

[156] The next question for the Board to consider is the “*extent*” and “*degree*” of the “*degrading, dehumanising, or demeaning*” activities. The Board finds that such activities are frequent and an integral part of the story-line of the film.

[157] The Board considered whether Section 3(3)(d) applies, but could not find any detail to suggest that scourging or

crucifixion, being imposed by the State was historically illegal, and hence a criminal act. There was no evidence that blasphemy, which did appear to be a “*crime*”, in fact occurred.

[158] The Board examined the publication to ascertain pursuant to Section 3(3)(e) if anti-Semitism was a feature in “*The Passion of The Christ*”. The Board considered there was a complex response between the Jewish and Roman characters in the film, which depicted a struggle by the Jewish population against the Roman occupiers. The Board found that there were groups of characters in both the Jewish and Roman characters, although many of both races were portrayed as rather flat, two dimensional. The faces in the mob changed over time when confronted with the plight of Jesus. The priests were not unified in their view of whether Jesus should be crucified, and two were expelled from the gathering. The Roman soldiers who inflicted most of the violence were described in the Classification Office submission as “*leering*” and appeared as less appealing characters than many of the individual Jews such as Simon of Cyrene.

[159] Simon of Cyrene was clearly identified as a Jew and although he initially had misgivings about assisting Jesus he became a significant helper with Christ’s burden.

[160] The Board could find no direct evidence to suggest that the film was anti-Semitic on the basis of the presentation of the Jewish characters, or the Jewish religion, in the film. The Board could find no direct evidence that represented the Jews in the film as “*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*”.

[161] The Board is also required to decide whether the film implies that the Jews, in “*The Passion of The Christ*”, are represented as “*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.

[162] The Board considered the submissions of the NZARH. Although it may be accepted that there are few Jewish characters in the film who are treated sympathetically other than Simon of Cyrene and Saint Veronica, this is balanced against the lesser Roman soldiers, who are shown as insensitive thugs. Saint

Veronica is portrayed as a person motivated by charity. The suggestion that using her veil to take some blood from Christ's face is a "*rite of the Eucharist, rather than an act of charity*" may be a matter of interpretation by some, rather than an obvious implication. The film does show some Jewish women who express their horror at Jesus' fate and there is a changing view from some in the crowd as the torture and crucifixion continues. The Board could not read this as anti-Semitic.

[163] In respect to the role of the Sandrehin (the Jewish Counsel of Priests), the Board accepts that they were certainly not portrayed as admirable characters. The film may be factually inaccurate, according to the Gospels, by having Caiaphas present at the crucifixion but whether his presence can be said to be deliberately anti-Semitic is not clear to the Board. Persons with an academic education in history and Christianity may have interpreted the presentation as showing that the Sandrehin "*represent the old religion of Judaism which has been supplanted by the new faith in Christ: In the penultimate scene of the film, they are shown in the temple as it is destroyed by earthquake, while Gentile Roman soldiers pray before Christ's body. In this respect the film represents the Jewish religion as inferior to belief in Christ*". The Board finds that it is unlikely that the general population, even if adherents to the Christian faith would so interpret.

[164] The Board does accept that to some extent "*the Roman authorities are treated sympathetically...the characterisation of Pilate is one of the most sympathetic in the film, contrary to historical evidence.... Pilate's wife Claudia is mentioned only in passing in the Gospels; in the film she is developed into a character who is deeply affected by the suffering of Christ*".

[165] The Board has to consider the extent and degree to which and the manner in which the publication represents anti-Semitic views, either directly or by implication. The Board accepts that some parts of the film could be interpreted as anti-Semitic only by applying a greater level of academic knowledge than most would have.

[166] The NZARH submission states "*The fact that anti-Semitism is rare in this country, and that our Jewish population is small in number, could make New Zealanders especially vulnerable to the sentiments of this film. Having had little experience of anti-Semitism and being unlikely to have ever met a Jew, teenagers will have no points of comparison. This is particularly true of teenagers from Fundamentalist families, who*

might only know about Judaism from a biblical perspective". It is the Board's view that "*The Passion of the Christ*" as a film per se is unlikely to cause young persons 15 years of age and over to associate "*The Passion of The Christ*" as anti-Semitic. It is more likely perhaps that that implication may be drawn by some adults and taught to teenagers. Unfortunately the Board does not have control over what some people may draw from the film whether it is present or not in the script.

[167] The Board has applied the grounds under Section 21 of the Human Rights Act to its deliberations in respect to Jewish people and their religion.

Section 3(4)

[168] The next section of the Act the Board must consider in respect to "*The Passion of The Christ*" is Section 3(4) of the Act.

[169] In *The Society for the Promotion of Community Standards Inc. v Waverley International (1988) Ltd* [1993] 2 NZLR 709 at 718, Tipping and Jaine JJ stated:

"When speaking in S11(1)(a) of the dominant effect of material, Parliament was clearly speaking of the effect of the material on the minds of those persons to whom it was intended or into whose hands it was likely to go. There is a material distinction between the dominant effect of the material and its content. Effect looks at the effect on the mind of the reader. Content looks of course to what the material in question contains or portrays".

[170] Pursuant to Section 3(4)(a) the Board accepts the Classification Office submission that the dominant effect of "*The Passion of The Christ*" is a very gory and unrelenting account of the last twelve hours of Christ's life. The effect on the viewer may vary significantly. For some it may re-affirm their Christian faith. For those unfamiliar with the story it may be disturbing. The viewing of "*The Passion of The Christ*" may be harrowing to those without the ability or wish to contextualise the story. Others may see it as a moving story of self-sacrifice, a mother's love and man's inhumanity to man.

[171] The trauma for some may well be impacted by only one person, being the undeserving recipient of horrendous violence. It is the Board's opinion that viewing "*The Passion of The Christ*" is likely to be traumatic and nightmarish for those below

the age of 15 years. The Board finds that to view this film persons must be able to process the content to the extent that they can recognise its historical foundation, and have the maturity to be able to start to analyse and reject ideas. The Board finds by Year Eleven at High School in New Zealand young persons of 15 and above are required to start taking responsibility for making decisions for themselves, as senior High School students. Although it is likely that most will still have a degree of parental guidance, it is the Board's view that young people of 15 years and above will have the capacity to decide if this film is something they wish to see, after reading the description which will accompany it.

[172] The impact of the medium, being film, is graphic and profound. The sound effects are well crafted and it is a highly dramatic film. There is subjective camera work, when the camera turns upside down and spins to fit in with Christ's state of unwellness at the time. There are huge visual impacts in the film, including graphic close-ups of Christ's bloodied and battered face.

[173] The differing media in which "*The Passion of The Christ*" could be presented in will be dealt with later in this Decision.

[174] In respect to Section 3(4)(c) "*The Passion of The Christ*" is a film which is considered to have merit by some sectors of the New Zealand community, particularly those who follow the Christian religion. In general it is a well made film, with high production values, especially with respect to editing, cinematography, and music.

[175] The film has a moral purpose to the Christian community and others. It is a tale of human endurance and suffering on behalf of others, but it is not completely successful for a wider audience. If the viewer did not know the Bible it would be difficult to follow the film.

[176] In respect to Section 3(4)(d) "*The Passion of The Christ*" is specifically designed for a Christian audience to educate them regarding the suffering of Christ. It is aimed at an adult audience, rather than children or young people, in that it is presented in the manner of a medieval passion play. It may be seen as a way for some people to re-fortify their faith by seeing graphic detail of Christ's suffering. It may be off-putting for others.

[177] In respect to Section 3(4)(e) “*The Passion of The Christ*” has as its purpose education and reinforcement of religious faith. It is also likely to stimulate discussion. It is Mel Gibson’s view of the story of “*The Passion*”. “*The Passion of The Christ*” may be used by schools with a religious affiliation to Christianity or for other educational purposes.

[178] In respect to paragraph 3(4)(f) of the Act. It is unlikely that this publication will be used as much for entertainment as for education.

[179] The Board has not based its finding on historical authenticity in respect to the film.

EXCISIONS

[180] The Board did consider if a different rating may be applied if excisions were made to the film. None of the persons making submissions sought excisions.

[181] The Board finds that the cruel, violent, and gory scenes including full-face close-up portrayals of Jesus’ bloodied and battered face, were too frequent to be able to be excised while retaining the story-line.

CONSULTATION

[182] The Board has the right to consult in respect to matters before it pursuant to Section 54 of the Act. The Board did not find the need to formally consult as it had before it an extensive number of submissions, including the Classification Office interviews, and its own expertise.

BILL OF RIGHTS

[183] In making its decision in respect to “*The Passion of The Christ*” the Board has considered the *Living Word* decision which states:

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

[184] 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.

[185] 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”.

[186] The Board would prefer a simpler approach which recognised that in 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 an unexcised version of the film/video and an unrestricted classification would cause. Nonetheless, it appears sensible for the Board to continue to utilise the 5-step approach for the present.

[187] 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.

[188] 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 “*promotion 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

“demean”, “dehumanise”, “extent”, “degree” and “torture” by way of dictionary definition and applied the definitions in as least restrictive manner possible. There are no definitions for these terms within the Act or in applicable case law.

[188] 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 s 14. 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 receive material involving horror, cruelty, or violence as seen in “*The Passion of The Christ*”. 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 film makers, 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, in this case a restriction to persons aged 15 years or over. Potential viewers under the age of 15 years are restricted in their right to view “*The Passion of The Christ*”. All those involved in production, distribution, promotion and exhibition of “*The Passion of The Christ*” are restricted from having persons under the age of 15 years view the publication.

[189] 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 of protected persons under 15 years from being exposed to scenes of horror, cruelty and violence.

[190] Pursuant to the 5th step in *Moonen 1* the Board considers the limitations it has placed on “*The Passion of The Christ*” 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.

THE AGE RESTRICTION

[191] It is the Board's opinion that restriction of viewing by persons under 15 years, is justified due to society's wish to protect children and young persons from likely injury, yet providing the minimum interference with the rights under the Bill of Rights Act.

[192] The Board cites the comments made in the Board's decision dated 8 September 2000 in response to the Court of Appeal's direction to the Board in *Moonen 1* (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 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.

[193] It is the Board's expert opinion because of the extent and nature of the activities in Section 3(i) of the Act in "*The Passion of The Christ*" and the way they are presented, it "*is likely to be injurious to the public good*" if the publication is not restricted to those aged 15 years or over.

ACCOMPANIED CHILD CLASSIFICATION

[194] The Board considered the submission that the film be given a rating to allow children or young people accompanied by parents, guardians, teachers, and others to view "*The Passion of The Christ*".

[195] The Board holds that although an accompanying person may well assist 15 year olds and older with interpretation, the attendance of an “adult” does not necessarily reduce likely “injury” to the child or young person in viewing the horror, violence, and cruelty in the film. The Board finds it is against the public interest for those under 15 years of age to view the material in “*The Passion of The Christ*”.

DIFFERING MEDIA

[196] In making its decision the Board has considered the differing media “*The Passion of The Christ*” could potentially be released under, including film, video and DVD, for sale or hire.

[197] The impact of “*The Passion of The Christ*” is unlikely to be significantly different in the differing media for the vast majority of viewers. The few viewers who maybe find the violence stimulating are likely to have access to more voyeuristic publications.

DESCRIPTIVE NOTE

[198] The descriptive note to accompany the film and video or DVD version of “*The Passion of The Christ*” is “Prolonged sequences of brutal violence, torture and cruelty”.

Dated at Rotorua this 5th day of April 2004.

Claudia Elliott

President, Film and Literature Board of Review