

7 March 2007

**REPORT ON APPLICATION FROM STEPHEN COTTERALL FOR LEAVE OF THE SECRETARY FOR INTERNAL AFFAIRS TO APPLY TO THE FILM AND LITERATURE BOARD OF REVIEW TO REVIEW THE CLASSIFICATION OF THE CD/DVD *50 CENT: THE MASSACRE***

1. In an application, received by the Department on 1 February 2007, Stephen Cotterall sought leave of the Secretary for Internal Affairs to apply to the Film and Literature Board of Review (the Board) to review the classification of the CD/DVD *50 Cent: The Massacre*.

***Office of Film and Literature Classification decisions***

2. The Office of Film and Literature Classification (the OFLC) classified *50 Cent: The Massacre* as:

Objectionable except if the availability of the publication is restricted to persons who have attained the age of 16 years.

3. In the written reasons for its decision (copy enclosed), the OFLC explains that the CD and DVD *50 Cent: The Massacre* falls within the sub-genre of hip-hop music known as gangsta rap. Many of the tracks on the CD focus on 50 Cent's hip-hop lifestyle. He brags about his rapping ability, his wealth, and his prowess with women, and issues threats to other rappers he considers to be enemies. The songs frequently use offensive language and slang phrases to refer to the violent nature of life in the neighbourhood where he comes from and to his previous incarnation as a hustler and drug dealer. The DVD contains 21 music videos that correspond to the tracks on the CD.
4. OFLC considered the frequent references to drug use and drug dealing do not promote and encourage these activities to any real degree, but neither do they condemn drug use. They are presented as a part of the gangsta rap lifestyle.
5. The publications, while making frequent references to violent activities, are not considered to promote or encourage criminal acts. However, the constant references to firearms and other weapons, and to serious violent crimes were considered to have the potential to glamorise a violent lifestyle.
6. OFLC found that the unrestricted availability of the publications is likely to be injurious to the public good. This is primarily due to the manner in which matters of crime and violence are dealt with, and to a lesser degree sex. OFLC considered the lyrics exaggerated and intended to fit into the

"boasting" style of the gangsta rap music genre. However, OFLC did consider it possible that the lyrics might encourage impressionable young listeners and viewers to adopt aggressive attitudes.

### ***Reasons for seeking a review***

7. In his application, Stephen Cotterall states that he is seeking a:

Complete ban – objectionable – dangerous to public good.

8. Mr Cotterall states the review is sought because he is not satisfied with the age restriction. He believes that, irrespective of the current classification, the publications will be given to younger children. He considers the publications have "no value", "encourages violent and criminal behaviour", including drug dealing, and a "wrong attitude to authorities and women". Mr Cotterall states "this individual '50 Cent' should not be allowed to sell his rubbish in New Zealand at all".

### ***Who May Apply to the Board?***

9. Under section 47(2) of the Films, Videos, and Publications Classification Act 1993 (the Act), the following persons may apply to the Board for a review of a classification decision made by the OFLC:

Where the publication has been submitted to the Classification Office pursuant to section 13 or section 42 of the Act, the person who submitted that application;

Where the publication has been submitted to the Classification Office by the labelling body pursuant to section 12 of the Act, the labelling body;

- (c) Where the publication has been referred to the Classification Office by a court pursuant to section 29(1) or section 41(3) of the Act, any party to the proceeding in respect of which the referral was made;
- (d) In all cases, the owner, maker, publisher, or authorised distributor of the publication;
- (e) With the leave of the Secretary, any other person.

### ***Application of the Guidelines for Granting Leave***

10. In order to determine whether or not Mr Cotterall ought to be granted leave to apply to the Board, I considered four matters under the *Guidelines for Granting Leave to Apply to the Board*:

Whether the application for leave was received in time;

Whether the application for leave is "vexatious";

Whether the application for leave is "frivolous";

Whether the application for leave establishes a *prima facie* case for review.

These matters are discussed in paragraphs 11 to 14 below.

11. Under section 47(3) and section 47(3A) of the Act, an application for leave of the Secretary must be received, during ordinary office hours, within 20 working days of the day on which the relevant OFLC decision is first made open to the public for inspection. In this instance, the OFLC decision was published on 16 January 2007 and the application was lodged with the Secretary on 1 February 2007, well within the specified statutory timeframe.
12. I considered the application in order to determine whether it was **vexatious** (not made in good faith or motivated by malice) in terms of the Guidelines. No evidence was found in the application to suggest that it was vexatious.
13. I then considered whether the application for leave was **frivolous** (trivial, needless or unfounded, or so untenable that it could not succeed) under the Guidelines. In doing so I considered the arguments advanced by Stephen Cotterall and concluded that the application was not frivolous.
14. Consideration was then given to whether the application for review established a **prima facie case** for review. As noted in paragraph 8 above, Mr Cotterall has indicated in his application that he wants the publications in question banned. His application does not propose a change to the current age restriction. Following a review of the publication, and OFLC's written decision, I am of the opinion that the application could not succeed in having the publications banned (ie deemed objectionable) in terms of section 23(2)(b). This is because the content of the CD/DVD would not, in my opinion, meet the necessary criteria set out under section 3 of the Act.
15. Section 3 of the Act provides for both mandatory and discretionary bans. Any publication that "promotes or supports, or tends to promote or support" the types of specified behaviour described in section 3(2), such as the exploitation of children for sexual purposes, bestiality, or torture, must be banned under the Act. If a publication depicts but does not "support or promote" those same behaviours it can, depending on the nature of the depiction, either be banned or age restricted under the Act. A publication that is age restricted is deemed to be objectionable, unless the availability of that publication is restricted to persons who have attained a certain age (eg R 16).
16. I consider it conceivable that a prima facie case could be made to alter the existing age restriction that applies to the publication. However, this is not the outcome being sought. Mr Cotterall's request for a review seeks a "complete ban" on the basis that, in his opinion, the publications are "objectionable".

17. Having considered the material I am of the view that there is no evidence provided, nor any other reason to suggest, that the circumstances of this case would begin to approach the threshold required to meet the test of 'objectionable" under section 3 of the Act. The Department's legal services section supports this viewpoint. In conclusion, Stephen Cotterall has not, in my opinion, been able to establish a *prima facie* case under section 3 of the Act for the application to be considered by the Board.

***Decision***

18. I have decided to **decline leave** to Stephen Cotterall to apply to the Film and Literature Board of Review to review the classification of the CD/DVD *50 Cent: The Massacre* because his application for leave failed to satisfy the Guidelines for Leave of the Secretary for Internal Affairs in that the application has not established a *prima facie* case for review.

Christopher Blake  
Secretary for Internal Affairs