

Director-General of Licensing

Decision Notice

Matter: Review of Delegate Decision – Complaint under *Private Security Act*

Complainant: [REDACTED]

Legislation: Part 6A of the *Private Security Act* and Part 3 of the *Licensing (Director-General) Act*

Decision of: Director-General of Licensing

Date of Decision: 7 December 2016

BACKGROUND

- 1) On 9 May 2016, a complaint pursuant to section 53A of the *Private Security Act* ("the Act") was lodged on behalf of [REDACTED] alleging that he had been roughly treated by security officers at the Casuarina Bus Exchange. The incident that gave rise to the complaint occurred on 8 October 2014, some 19 months prior to the complaint being lodged.
- 2) [REDACTED] stated that he was at the Casuarina Bus Exchange on the day in question and tried to stop a fight between two males. Security officers intervened in the fight and [REDACTED] was restrained and placed on the ground. [REDACTED] complained that the security officers were very rough with him and that he felt that they were going to break his shoulder. He also alleged that one of the security officers tried to punch him.
- 3) By decision dated 30 August 2016, a delegate of the Director-General of Licensing ("the Director-General") determined that, on the material before him, there was insufficient evidence to support a finding that any of the security officers involved in the incident with [REDACTED] had contravened the Act or the Code of Practice for Security Officers, effectively dismissing the complaint.

CURRENT SITUATION

- 4) On 27 September 2016 [REDACTED] lodged an application for a review of the decision of the delegate. The grounds stated for the review are that the Director-General should give greater weight to what [REDACTED] has reported and that he knows there were security cameras at the scene.
- 5) Part 3 of the *Licensing (Director-General) Act* provides for the review of delegate decisions by the Director-General. Section 14 of that Act provides that in conducting a review of a delegate decision the Director-General must take into account any matter that the Act under which the delegate decision was made requires the Director-General to take into account in reviewing the decision.

EVIDENCE OF THE COMPLAINANT

- 6) Section 19 of the Act provides that a Security Officer Licence is issued subject to the condition that, where a Code of Practice has been approved under Section 48 of the Act, the Code will be complied with by the licence holder. A Code of Practice has been approved for Security Officers. Section 26 of the Act provides that a contravention of a condition of licence is a ground for the suspension or cancellation of a security provider's licence. In determining whether or not there were grounds for disciplinary action against the security officer who dealt with [REDACTED], the delegate was required to determine whether or not the security officer concerned had breached the Act or any conditions of the Code of Practice for Security Providers in breaking up the fight and in his handling of [REDACTED].
- 7) [REDACTED] evidence, as set out in the letter dated 9 May 2016 from the North Australian Aboriginal Justice Agency ("NAAJA") on his behalf is as follows:
- On 8 October 2014, [REDACTED] was at the Casuarina Bus Exchange with two men whose names he knew who became involved in a fist fight. (For the purpose of this Decision Notice, those men are referred to as [REDACTED] and [REDACTED]). [REDACTED] states that he did not want to fight but stepped in to pull one of the men away from the fight.
 - [REDACTED] was then grabbed by the shirt by several security officers who held him down on the ground waiting for Police to arrive.
 - The security officers were very rough with [REDACTED] and held him in a way that felt like they were going to break his shoulder. One of the security officers tried to punch [REDACTED].
 - Police arrived and [REDACTED] was arrested for being drunk in a public place and for spitting a Police officers.
 - Based on the above matters, [REDACTED] feels that the security officers used excessive force and did not have a proper basis for restraining him.
 - [REDACTED] does not know the names of the security officers involved in the incident. However, enquiries by NAAJA revealed that one of the security officers may have been [REDACTED] who is employed by [REDACTED].
- 8) It was submitted by NAAJA that the actions of the security officers breached the following clauses of the Code of Practice for Security Officers:
- 3.8 Except where he or she is subjected to physical force and violence and have to respond in his or her own defence, not threaten any member of the public with physical force or violence.
 - 3.13 Not use undue force in the course of his or her duties.
 - 3.14 Not participate or encourage others to participate in assault.
 - 3.16 In the course of his or her duties take action to prevent violence occurring.
- 9) The letter from NAAJA states that [REDACTED] is seeking an apology for the way he was treated and requests that the Director-General investigate the matter with a view to reprimanding the security officer concerned. The letter also notes that [REDACTED] "is ultimately seeking compensation for the excessive use of force including for humiliation, immediate pain and distress caused by the use of force".
- 10) No medical or other evidence has been presented in respect of any injuries suffered by [REDACTED]. Nor was any explanation provided in respect of the delay of some 19 months between the incident under investigation and the complaint lodged with the Director-General.

INVESTIGATIONS CONDUCTED BY LICENSING INSPECTORS

- 11) The investigations into the complaint carried out by licensing inspectors were considerably more difficult than usual due mainly to the considerable lapse of time between the incident at the Casuarina Bus Exchange and the lodging of the complaint on behalf of [REDACTED]. The investigation did however reveal the identity of some but not all of the security officers who were involved in breaking up the fight involving [REDACTED] and the two other males.
- 12) Investigations revealed that three security officers employed by [REDACTED] were on duty at the Casuarina Bus Exchange on 8 October 2015 being [REDACTED], [REDACTED] and a third person identified only as [REDACTED]. [REDACTED] is contracted to provide security services in and around the Casuarina Bus Exchange.
- 13) [REDACTED] provided a statutory declaration to Police on the day of the incident involving [REDACTED]. He confirmed that he was on duty as a security officer that day at the Casuarina Bus Exchange when he noticed security officers from the [REDACTED] Shopping Centre speaking to Aboriginal males in the vicinity of an entrance to the shopping centre. He observed the Aboriginal men walk away from the security officers and move towards the car park where other people were sitting down.
- 14) [REDACTED] observed a person, later identified as [REDACTED], walking amongst the group inciting them to fight with him. As [REDACTED] approached the group he saw a person, later identified as [REDACTED], stand up and start fighting with [REDACTED]. At that point one of [REDACTED] colleagues called Police. He also observed other people engaging in the fight. [REDACTED] stated that [REDACTED] was wildly swinging his fists around so he grabbed him and brought him to the ground.
- 15) [REDACTED] stated further that [REDACTED] left the scene at that time and that he observed a security officer from the [REDACTED] restrain one of the other males ([REDACTED]) who was involved in the fighting. Police arrived shortly after and [REDACTED] observed them escort [REDACTED] to the Police vehicle. He then observed Police escort [REDACTED] to the rear of the Police vehicle and place him in the caged area of the vehicle. [REDACTED] stated that he tried to assist by locking the door of the caged area when [REDACTED] kicked out and spat at him several times with the spittle making contact with his face and throat.
- 16) [REDACTED] attended hospital however the waiting time was too long so he attended the Police Station and provided his statement to Police.
- 17) On 14 July 2016 [REDACTED] provided a statement of his recollection of the incident to licensing inspectors for the purpose of their investigations. The statement was consistent with the statement provided to Police on the day of the incident. In the statement provided to licensing inspectors [REDACTED] noted that he commenced duty at 2.30 pm on 8 October 2014 and that he observed the [REDACTED] security officers talking to the Aboriginal male at approximately 5.30 pm and assumed they had just removed the person from the shopping centre.
- 18) [REDACTED] stated that he decided to keep an eye on the group of males. As he approached the group of males a fight began and he shouted "break it up, that's enough" but was ignored. He then moved to apprehend one of the males by approaching from behind and pulling him away from the fight. He stated that the male continued to flail around trying to continue the fight at which point [REDACTED] determined that the only way to defuse the situation was to bring the male to the ground. He stated that he held the male on the ground for only as long as was necessary to prevent him from continuing to fight and then allowed him to sit up.
- 19) [REDACTED] stated that he did not observe any security officer involved in the incident, including himself, use more force than necessary to bring an end to the fighting. He stated also that he did not observe any security officer attempt to strike any of the males involved in the fight.

- 20) In an email to licensing inspectors dated 28 July 2016 [REDACTED] confirmed that she did remember the incident in question. She stated that to her knowledge none of the males involved in the fight were injured or rough handled by the security officers. She also confirmed that security officers from [REDACTED] were also involved in the incident assisting the as there were a number of people engaged in the fighting which had spilled out of the shopping centre.
- 21) On 26 July 2016 [REDACTED], a director of [REDACTED], provided licensing inspectors with a Job Report for 8 October 2014. That report noted that security officers called Police due to fighting involving two males during which one of the security officers was assaulted.
- 22) [REDACTED] is the Security Manager for [REDACTED], the company which provides security services for the [REDACTED]. On 15 July [REDACTED] advised licensing inspectors that he had spoken with senior and long term security officers of the company and none of them were able to recall any incident involving [REDACTED] around the date of the incident. He also advised that he had been unable to locate any logged CCTV footage of an incident in the area on the relevant date, noting that the CCTV coverage of the Casuarina Bus Exchange is very limited.
- 23) Licensing Inspectors also obtained a statement of alleged facts prepared by Police in respect of a complaint laid against [REDACTED], one of the persons involved in the fight at the Casuarina Bus Exchange on 8 October 2014. The statement notes that Police attended the scene at about 6.00 pm where [REDACTED], who was intoxicated at the time, had been engaged in a fight with [REDACTED] and [REDACTED]. The fight was observed by a number of security officers and [REDACTED] had left the area prior to the arrival of Police.
- 24) The statement alleges further that [REDACTED] returned to the Casuarina Square area later in the day where he became involved in a physical altercation with an unknown male. [REDACTED] was apprehended by security officers. Police took [REDACTED] into protective custody when it was discovered that he had a tomahawk concealed in his shorts. [REDACTED] was subsequently arrested and convicted of fighting in public and possession of a controlled weapon.

NON-AVAILABILITY OF CCTV FOOTAGE

- 25) One of the grounds on which [REDACTED] seeks a review of the delegate's decision is that he knew "there were security cameras at the scene", presumably at the Casuarina Bus Exchange or Casuarina Square. It has been confirmed that CCTV cameras are in fact installed at the Casuarina Bus Exchange.
- 26) The licensing inspectors investigating [REDACTED] complaint made a number of enquiries in an attempt to obtain any relevant CCTV footage that may have been captured of the incident involving [REDACTED] and security officers on 8 October 2014. No relevant CCTV footage was able to be obtained by the licensing inspectors. That outcome is not surprising given the fact the complaint was lodged on behalf of [REDACTED] some 19 months after the incident occurred and CCTV footage is normally only retained for a relatively short period of one to two months.
- 27) It is acknowledged that CCTV footage often provides cogent evidence in respect of complaints of this nature. Where complaints are lodged in a timely manner it is the usual course for licensing inspectors to contact the person holding the video footage and request that they preserve the footage for evidentiary purpose. In this instance the CCTV footage was not preserved as, by the time the licensing inspectors contacted the Casuarina Bus Exchange, the footage for 8 October 2014 had already been deleted or overwritten.
- 28) Further inquiries of Police and the Office of the Director of Public Prosecutions revealed that neither of those agencies held any footage of the incident.

CONSIDERATION OF THE ISSUES

- 29) In determining the outcome of this complaint the delegate was required to consider whether or not, on the balance of probabilities, the evidence presented from the investigation by licensing inspectors was sufficient to conclude that the security officer or officers who dealt with [REDACTED] had used undue force. The delegate determined there was insufficient evidence on which to base such a conclusion and therefore dismissed the complaint. The issue for the Director-General in conducting a review of this nature is to determine whether, in all the circumstances, the delegate's decision was the correct and preferable decision.
- 30) On the basis of the allegations contained in the complaint lodged on behalf of [REDACTED] and the information obtained by licensing inspectors a number of matters are not in dispute. Namely, on 8 October 2014 there was an altercation between a number of Aboriginal males in the location of the Casuarina Bus Exchange. Persons known to be involved in the fight were [REDACTED], [REDACTED] and [REDACTED], noting that [REDACTED] states that he was not participating in the fight but rather trying to break it up.
- 31) A number of security officers intervened and attempted to break up the fight. Amongst the security guards involved were [REDACTED], [REDACTED] and a person known only as [REDACTED] who were at the time employees of [REDACTED] and providing security services at the Casuarina Bus Exchange. A number of security officers employed by [REDACTED] to provide security services to [REDACTED] were also involved in the incident. Due to the significant passage of time between the incident involving [REDACTED] and the lodgement of the complaint the licensing inspectors were unable to identify any of those security officers. As a consequence, it cannot now be ascertained with any degree of certainty whether any of the [REDACTED] was involved in the physical restraint of persons involved in the fight.
- 32) The evidence available leads to the conclusion that [REDACTED] and [REDACTED] were restrained by security officers following the fight and held until police arrived. [REDACTED] was restrained by security officer [REDACTED]. The investigations conducted by licensing inspectors did not provide any indication of which security officer restrained [REDACTED]. Not surprisingly, [REDACTED] was unable to identify the name of the person who restrained him.
- 33) [REDACTED] provided little evidence in respect of any physical injury suffered during his involvement with the security officer who restrained him. His complete submission in that regard is that the security guard "*held him down in a way that made (him) feel like they were going to break (his) shoulder*". [REDACTED] made no submission in respect of the requirement for medical treatment after the incident and no medical evidence was presented in respect of short or long term injury suffered by [REDACTED] as a result of being restrained by a security officer.
- 34) As noted in the original letter of complaint lodged with the Director-General by NAAJA, when Police arrived at the scene of the incident following the *fight* "[REDACTED] was arrested for being drunk in a public place and for spitting at police officers". As a consequence, the evidence presented by [REDACTED] must be treated with a considerable degree of caution as he was drunk at the time of the incident, at least in the assessment of the Police who attended and took him into custody. In addition, the fact that he was arrested for spitting at Police provides a clear indication that [REDACTED] was not in control of himself or behaving appropriately in his dealings with Police.
- 35) One of the grounds on which [REDACTED] sought a review was that the delegate should have attached more weight to what he said in respect of the incident. I am satisfied that the delegate in fact gave appropriate weight to the evidence provided by [REDACTED] in his original complaint. That evidence was vague and unhelpful in terms of the investigations conducted by the licensing inspectors. It is not surprising that [REDACTED] recollection of the incidents leading to him being restrained and subsequently arrested is vague given that he was intoxicated at the time.

- 36) The second ground of [REDACTED] application relates to the failure to obtain CCTV footage of the incident. It is of significance in that regard that [REDACTED] waited some 19 months from the date of the incident to lodge his complaint. As noted above, no explanation was provided for that delay. The failure to lodge the complaint in a timely manner created significant difficulties in terms of the investigations conducted, not the least of which that it proved impossible to obtain the CCTV footage so long after the incident. The lack of CCTV footage was a direct result of [REDACTED] delay in lodging his complaint and not a result of any action or inaction on the part of the security officers involved. It would be somewhat of an anomaly to give any significant weight to the fact the CCTV footage was no longer available when it was own delay that led to that situation.
- 37) To reach a finding that a security officer had used excessive force in dealing with [REDACTED] the delegate would need to be satisfied of the identity of the security officer and be persuaded by the evidence that the degree of force used by the security officer to restrain [REDACTED] was excessive in the particular circumstances of the incident. Of significance in this case so far as the incident is concerned was that a group of adult men were engaged in a physical fight in a public place with a number of those men being intoxicated. Also of significance is the fact that three of the men, including the complainant [REDACTED], were arrested by Police shortly after the fight for offences relating to public drunkenness and offensive behaviour.
- 38) Again, it must be emphasised that the investigation of this complaint was considerably hampered by the fact the complaint was lodged 19 months after the incident occurred. In the decision dated 30 August 2016 the delegate made the following determination:
- "Having considered the evidence and taken into account the statements of [REDACTED] and [REDACTED], I am satisfied that there is insufficient evidence to find any Licensed Security Officer has contravened section 19(2)(c) of the Private Security Act by failing to comply with the Code of Practice for Security Officers specifically clauses 3.8, 3.13, 3.14 and 3.16".
- 39) At the time of making that decision the delegate was unable to confirm any elements of the complaint that would have led to the conclusion that a breach of the Code of Practice had occurred. Specifically the delegate had no evidence before him identifying the officer who actually dealt with [REDACTED], the manner in which [REDACTED] reacted to the intervention of the security officers to stop the fight or the degree of force used by that security officer to restrain [REDACTED]. The evidence presented by [REDACTED] in that regard was not helpful in determining the outcome of the complaint. In addition, [REDACTED] provided no evidence of any injury suffered when he was restrained by the security officer that would lead to a conclusion that the degree of force used was excessive.
- 40) In all the circumstances, and based on the matters set out above, I am satisfied that the decision of the delegate was the appropriate and preferable decision.

DECISION

- 41) On the basis of the matters set out above, and in accordance with section 14(2)(a) of the Licensing (Director-General) Act, I have determined to affirm the decision of the delegate dated 30 August 2016 that there is insufficient evidence available to reach a conclusion that a security guard or guards had breached the Act and/or the Code of Practice for Security Guards in dealing with [REDACTED] during the incident that occurred on 8 October 2016.
- 42) In addition, in accordance with section 53D(1)(b) of the Private Security Act I have determined that no further action is warranted in respect of the complaint lodged by [REDACTED] against the still unknown security guard or guards.

REVIEW OF DECISION

- 43) Section 53E of the Act provides that a decision made on the review, under Part 3 of the Licensing (Director-General) Act is a reviewable decision.

- 44) Section 53G of the Act provides that a person affected by this decision may seek a review before the Northern Territory Civil and Administrative Tribunal ("NTCAT"). For the purpose of this decision, section 9 of the *Licensing (Director-General) Act* describes an affected person and in this case, includes the security officer licensee subject of the complaint and the complainant.

Cindy Bravos
Director-General of Licensing

7 December 2016