

**IN THE MATTER OF**

The Private Security Personnel and  
Private Investigators Act 2010

**AND**

**IN THE MATTER OF**

Complaint under s 74 of the Act against  
**T C**

**DECISION**

[1] J M has laid a complaint against T C who holds a certificate of approval (COA) in the classes of crowd controller, property guard and personal guard. Mr M claims that Ms C breached the Act by failing to produce her COA when requested to do so. He also says that Ms C assaulted him and this amounts to misconduct. These events occurred well over a year ago while Ms C was working as a security guard outside Inland Revenue.

[2] Following the incident Mr M was charged with common assault and offensive behaviour. He was acquitted on the assault charge on 3 November 2020 after a defended hearing and the offensive behaviour charge was dismissed under s 147 of the Criminal Procedures Act.

[3] As the Police had already investigated the incident, before deciding whether leave should be granted for the complaint to proceed, I referred it to the Police then under s 75(1) of the Act. I asked them to review the matter and report back as to whether there was any basis for the complaint to proceed. By a report dated 23 November Constable Jerry Shorn reported that he had reviewed the Police file and the CCTV footage of the incident. He considered that the CCTV footage showed that Mr M was the instigator and that Ms C acted lawfully and professionally.

[4] Mr M disagrees with Constable Shorn's conclusion and considers the Police have changed their story. I however note that Constable Shorn was not involved in Mr M' arrest or prosecution. He is an alcohol harm protection officer and as such is the person who files and prosecutes complaints against licence and certificate holders with the Licensing Authority. He is therefore well placed to make an assessment as to whether the CCTV footage disclosed any misconduct or breach of the Act by Ms C.

[5] I have also viewed both the CCTV footage of the incident which was provided by the Police as well the video that was taken by Mr M. Having viewed both videos I agree with Constable Shorn's conclusions. I note that I have not read the judges decision when he acquitted Mr M on the criminal charges as requested by Mr M. I tried to get a copy of the decision, but it appears only an oral decision was given.

[6] The CCTV footage shows Mr M walking around inside what I assume are the IRD offices with Ms C stationed outside talking on her phone. While she is still on the phone Mr M exits the IRD offices, approaches Ms C and demands that she produce her COA. Ms C says something along the lines of "don't talk to me" and "don't tell me what to do" indicating that she is talking on the phone.

[7] She then tries to get past Mr M. Mr M video of the incident then blurs but you can hear him saying "don't touch me" and then "you assaulted me". I can see no touching or assault in the CCTV footage which is being filmed from some distance away and Mr M' back is to the camera and blocks whatever happens. A few seconds later it looks as if Mr M is grabbing Ms C's arm and trying to pull her down. Other people then arrive and block the view again. At least one of the other witnesses to the event can be heard telling Mr M that he saw him assaulting Ms C.

[8] I accept that Mr M asked Ms C to produce her COA and she did not do so. However s 66 of the Act only requires Ms C to produce her certificate to any person she is dealing with in the course of performing her duties. She is not required to produce her COA just because a member of the public, such as Mr M, comes up and asks for it, particularly when she was talking on the phone at the time Mr M approached her.

[9] Put another way Ms C was not dealing with Mr M in the course of her work as a security guard when he approached her and demanded she produce her COA. I therefore conclude that there is no evidence that Ms C breached the Act or knowingly contravened s 66(1) of the Act.

[10] There is also no clear evidence of who assaulted who or whether anything other than a technical assault occurred. My impression from both video footages viewed is that Mr M instigated the matter and that Ms C's actions were defensive rather than offensive.

[11] The more relevant question to ask in deciding whether there is a legitimate basis for a complaint is not whether Ms C assaulted Mr M but whether her actions amount to misconduct. Misconduct is defined in s 4 of the Act as conduct by a certificate holder that a reasonable person would consider to be disgraceful. I am satisfied no reasonable person would consider Ms C's actions to be disgraceful. A reasonable person is more likely to consider Ms C acted appropriately given the circumstances.

[12] I therefore conclude that there is insufficient evidential basis to proceed with either of Mr M complaints against Ms C. Leave to file or progress the complaint is therefore refused.

[13] I note that Mr M wanted the complaint to be decided based on the video evidence, photographs and other written material he has provided. He did not want a hearing but has asked for a decision to be issued by 5pm today. If I had concluded there were grounds for disciplinary action against Ms C I would have been required to have a hearing. However as both I and the Police conclude there are no grounds for disciplinary action against Ms C a hearing is not necessary, and the complaint is dismissed.

**DATED** at Wellington this 4<sup>th</sup> day of December 2020

  
P A McConnell  
**Private Security Personnel Licensing Authority**

