

THE LAW ENFORCEMENT REVIEW ACT  
LERA COMPLAINT NO. 819  
BOARD HEARING NO. 40

B E T W E E N:

H. W. (J.J. H. , Deceased),

Complainant,

- and -

CONSTABLE R. A. C. ,

Respondent.

D E C I S I O N

MAJORITY (CHUCHMAN, FABBRI, CHEGUS):

In the early morning hours of March 9th, 1988, J. J. H.  
("J.J. H. ") received a bullet wound which caused his death.  
Immediately prior to the incident Constable R. A. C. of the  
City of Winnipeg Police Department had in the course of his duty  
been acting in response to a reported stolen vehicle.

Constable C. and his partner came on the scene in the vicinity  
of X ADDRESS , in the City of Winnipeg and subsequently  
Constable C. separated from his partner. Fellow officers

joined in the search for the car thief suspect who was described as wearing a grey jacket, native and approximately 22 years of age. A suspect was apprehended at 2:39 a.m. and placed into custody. Constable C. did not participate in the actual arrest of the suspect but was, during the course of the pursuit, carrying and using his portable radio.

At approximately 2:41 a.m. a loud noise was heard followed by radio communication from Constable C. asking for assistance and a request for an ambulance. Constable C. was found with his service revolver in his right hand standing over the body of a man later identified as J. J. H. Mr. H. received a mortal gunshot wound in the chest area. He was given medical attention at the scene and conveyed to hospital whereupon he subsequently died.

The Complainant, H. W. brother of the deceased, J. J. H. filed a complaint against Constable R. A. C. alleging certain disciplinary defaults pursuant to Section 29 of The Law Enforcement Review Act ("the Act"). Mr. W. made his complaint as a third party and as a person aggrieved by his brother's death as contemplated by section 6(2) of the Act. Mr. H., the person affected under the complaint was not competent to give consent to the processing of the complaint, by virtue of his demise.

Therefore section 9(2) did not apply.

The alleged disciplinary defaults set out in the Notice of Alleged Disciplinary Default, (Exhibit 1), and forming the basis of the complaint were as follows:

(1) On or about March 9, 1988 abuse his authority by committing an assault and/or battery upon the person of J. J. H. in contravention of Section 29(a) of The Law Enforcement Review Act.

(2) On or about March 9, 1988 abuse his authority by using unnecessary violence or excessive force towards J. J. H. in contravention of Section 29(a)(ii) of The Law Enforcement Review Act.

(3) On or about March 9, 1988 abuse his authority by using oppressive or abusive conduct or language towards J. J. H. in contravention of Section 29(a)(iii) of The Law Enforcement Review Act.

(4) On or about March 9, 1988 abuse his authority by failing to exercise discretion or restraint in the use and care of firearms in contravention of Section 29(d) of The Law Enforcement Review

Act.

The Board dealt with a preliminary motion put forward prior to commencement of the hearing and determined that it had jurisdiction to hear the complaint. Further, the Board decided that the alleged disciplinary defaults itemized under (1) above should be struck out thereby leaving the remaining alleged defaults itemized in (2), (3) and (4), as the basis on which the hearing would proceed.

At the hearing upon completion of the evidence for the Complainant, a further motion was made that the complaint should be dismissed for lack of any evidence. The Board decided that there was no evidence to support the disciplinary defaults alleged under (3) above but that there was evidence for the complaint to proceed in respect of the disciplinary defaults itemized in (2) and (4) above.

When the hearing resumed, counsel for the Respondent Officer chose not to call any witnesses. The hearing concluded with argument from counsel for both parties.

As an initial consideration the Board reviewed the argument of counsel for the Complainant that the matter be referred to the Attorney-General for the possible laying of criminal charges. The circumstances of the incident giving rise to this complaint have

been subject to previous reviews. A referral at this time pursuant to section 35(1) of the Act would only be warranted if new and relevant evidence was disclosed during the hearing which was not available at the previous reviews. We find that no such evidence has been disclosed.

The Board must consider whether the essential elements of the alleged disciplinary defaults now before this Board have been proven. In facing the alleged disciplinary defaults, the Respondent Officer is presumed innocent of such action until proven otherwise. Section 27(2) of the Act imposes upon the Complainant the burden of proving the alleged disciplinary default beyond a reasonable doubt.

In argument, Counsel for the Respondent Officer has again raised the issue of identity and contends that this element has not been proven beyond a reasonable doubt. This argument was first put forward by Respondent's Counsel in his motion at the conclusion of the Complainant's case. In Law Enforcement Review Board proceedings the Respondent is neither compellable to testify nor required to attend the proceedings. As a result of the non-attendance of the Respondent, the Board did not have the benefit of direct identification evidence, however in considering the Respondent's said motion, the Board was satisfied that identity had





















