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# Annual Report 1996

## Office of the Commissioner Law Enforcement Review Agency

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Includes 15% post-consumer waste





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**Minister of Justice**

**Attorney General**

**Room 104  
Legislative Building  
Winnipeg, Manitoba, R3C 0V8  
CANADA**

To His Honour  
The Honourable W. Yvon Dumont  
Lieutenant-Governor of Manitoba

May It Please Your Honour:

It is my pleasure to present the 1996 Annual Report of the Law Enforcement Review Agency. This report details the Agency's accomplishments and activities for the twelve-month period from January 1, 1996 to December 31, 1996.

I trust this meets with your approval.

Respectfully submitted,

Original signed by

Honourable V.E. Toews,  
Q.C. Minister of Justice  
Attorney General







The Honourable Victor E. Toews,  
Q.C. Minister of Justice  
Attorney General

Dear Minister:

I am pleased to submit my report for the period January 1, 1996 to December 31, 1996 in accordance with Section 45 of The Law Enforcement Review Act.

I trust this meets with your

approval. Respectfully submitted,

Original signed by

Norman C. Ralph BA,  
MPA Commissioner



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# Challenges for Civilian Oversight

Sidney B. Linden, Chief Judge, Ontario Court of Justice (Provincial Division), speaking to a conference of the International Association for Civilian Oversight of Law Enforcement (IACOLE) recently held in Ottawa, commented:

*"The road to civilian oversight is never smooth nor short. The challenges faced by anyone trying to turn the concept of civilian oversight into reality are enormous. Emotions often run high. Generally, police resent civilian intrusion and at the same time, the public distrusts any participation in the process by the police themselves. Trying to forge consensus between these divergent views always has been and always will be extremely difficult."*

I concur with Chief Judge Linden when he says that the challenges are enormous. However, my experience with the police in Manitoba over the past five years has for the most part been very positive. Police management, as well as rank-and-file members, have in the main given my office their full cooperation over the years.

It has been my experience that the response to civilian oversight by police in Manitoba more closely resembles recent remarks made by RCMP Commissioner Phil Murray who, when speaking at the recent IACOLE conference, said:

*"Civilian oversight is often regarded as a yoke around the police manager's neck-an unnecessary burden without which a police force would have a much easier job of fulfilling its mandate. Members of the RCMP Public Complaints Commission know that the RCMP do not share this view. In fact, I perceive civilian oversight as a way of helping RCMP managers to improve service delivery by identifying weaknesses in their programs. In this context, public commissions offer extra tools to evaluate the success of our work. I am firmly convinced that civilian oversight can only be successful in an atmosphere of mutual respect, cooperation and understanding of each other's viewpoint and role."*

We are indeed fortunate to live in a free and democratic society where the principles and values of civilian oversight seem to be so well recognized and accepted by our police services. To my mind, this speaks very positively for the professionalism and civic accountability of our police. However, as a recent editorial in the Globe and Mail so eloquently stated;

*"The police are not perfect. Sometimes they make mistakes in upholding the law, and sometimes they even undermine and violate that which they are sworn to protect. Like all other branches of government they must be subjected to outside oversight, particularly because they hold a monopoly on the use of force and the ability to restrict individual freedom. The police cannot police themselves -- not because they are by nature more suspect than the rest of us, but simply because they are no less human."*

There is another kind of challenge facing civilian oversight, and that is the ability to ensure the effectiveness and independence of its operations.

The Hayes report from Northern Ireland recently reviewed the police complaints system there and recommended:

*"To ensure its independence the Police Complaints system should operate at the level of a Police Ombudsman. The Ombudsman should have complete control of the complaints process and should report to Parliament."*

In response to the Hayes report, Northern Ireland has established an Independent Commission For Police Complaints which operates at the level of an ombudsman and reports directly to Parliament.

British Columbia's Oppal Commission in its letter of transmittal recommended:

*"The establishment of an office of a police complaints commissioner operating at the level of an ombudsman reporting to the Legislature."*

British Columbia is currently in the process of implementing this recommendation.

The Honorable Barry O'Keefe, Commissioner, Independent Commission Against Police Corruption, New South Wales, Australia, commented at the recent IACOLE conference in Ottawa:

*"Independence must not only be a perception it must be a reality. While it is self-evident that oversight agencies must be free from political influence it should be equally self-evident that they should be free as well from bureaucratic influence and control."*

## **LERA's Role and Mission**

LERA is an independent, non-police agency whose role is to accept and investigate public complaints alleging abuse of authority by on-duty police officers. Investigations are conducted by trained investigators in an impartial, open and publicly accountable manner.

The Commissioner of LERA is appointed by the Lieutenant Governor in Council and has such powers and shall carry out such duties and functions as are conferred or imposed under The Law Enforcement Review Act. For purposes of conducting investigations, the Commissioner of LERA has all the powers of a Commissioner under Part V of The Manitoba Evidence Act.

The Commissioner has a responsibility to provide complainants with detailed and thorough explanations of all findings resulting from an investigation. The Commissioner must provide written reasons for decisions made in relation to specific complaints.

If the complainant or respondent is not satisfied with the results of an investigation, or with the Commissioner's decision, they have the right to appeal. Appeals are heard by a Provincial Court judge.

LERA's mission is to deliver a judicious, timely, impartial, client-oriented service to the public, and to the police services and peace officers that fall under our jurisdiction.

To be effective, we must be responsive to the varied backgrounds, needs and circumstances of those we serve. As a public-service agency, we actively support and, whenever possible, engage in alternative dispute resolution processes aimed at restoring and promoting social harmony between the affected parties.

## **How the LERA Process Functions**

The Law Enforcement Review Agency (LERA) is an independent non-police agency established in 1985. It is mandated by The Law Enforcement Review Act to accept and investigate public complaints alleging abuse of authority by on-duty peace officers.

LERA does not investigate criminal matters. Complaints involving allegations of criminal misconduct by police officers are referred to the Crown Attorney's office for investigation.

LERA is staffed by a full-time Commissioner who is supported by part-time investigative officers, administrative and clerical staff within the Law Enforcement Services Branch of the Manitoba Department of Justice.

### **To whom does the Act apply?**

The Act applies to any peace officer employed as a sworn member of a municipal police force, or any person otherwise empowered by regulation to act as a peace officer within a designated law enforcement body in Manitoba, except members of the RCMP.

If a citizen has a complaint against a member of the RCMP, he or she is directed to contact the RCMP Public Complaints Commission.

### **Who can make a complaint to LERA?**

Any person who feels aggrieved by the conduct or actions of an on-duty peace officer in Manitoba may file a complaint under this Act.

Third-party complaints may be made on behalf of other persons. The Commissioner must, however, notify the affected person and obtain their consent before proceeding with an investigation into the complaint.

### **How is a complaint filed?**

Complaints must be in writing, and signed by the complainant. Complainants' statements should set out the date, time, location and other particulars of the incident being complained about. If complainants need help preparing a complaint or making a statement, LERA staff or members of the local police service will assist them.

Complaints can be submitted directly to the Commissioner at the LERA office, to a Chief of Police, or to any member of a municipal police department. Complaints filed with police agencies are forwarded to the LERA Commissioner for investigation.

### **Are there any time limits?**

The Act requires that complaints be submitted within 30 days of the incident. However, the Commissioner may extend the time to file if the complainant did not have a reasonable opportunity to file a complaint within the required time limit.

The Commissioner may also extend the 30-day filing limit in order to avoid conflict with court proceedings or ongoing criminal investigations, when criminal charges have been laid against the complainant in relation to the incident being complained about.

## **How is a complaint investigated?**

LERA investigators take statements, obtain and review official police, medical and other reports, interview witnesses and conduct all necessary inquiries and investigations.

Complainants are encouraged to contact the Commissioner's office during the course of the investigation to inquire about the status of their complaint. The Commissioner shares all relevant information with complainants and respondents, and is open to discuss any findings with them before making a final determination on their complaint.

## **Legal Representation**

Complainants and respondents do not require legal representation when dealing with LERA. However, parties to a complaint are entitled to be represented by legal or other counsel at any time during the process. If complainants or respondents choose to be represented, they must arrange for and provide those services themselves.

Respondent officers are generally represented by legal counsel, as provided under their employment services contracts. Complainants may apply for legal aid, and if declined the Commissioner may in exceptional circumstances apply directly to the Attorney General for the appointment of legal counsel.

## **Complaint Resolution**

After an investigation is completed, the Act provides several alternative means for resolving complaints.

### (i) Informal Resolution

Whenever possible, the Commissioner will attempt to resolve complaints through an informal mediated process. Both the complainant and the respondent officer must agree to an informal resolution before it can take place. When a complaint is resolved in an informal manner, it is not subject to any further appeal or action, and no record of the incident appears on the officer's service record.

### (ii) Admission of Disciplinary Default

When a respondent officer admits having committed the alleged misconduct, the Commissioner reviews the officer's service record and consults with the Chief of Police before penalty is imposed for the disciplinary default.

### (iii) Referral to a Judge for Hearing

When a complaint cannot be resolved through an informal process or by admission of fault by the respondent officer(s), and if the Commissioner does not decline to take further action, the Commissioner must refer the complaint to a provincial judge for disposition at a public hearing.

## **The Commissioner shall decline to take further action:**

The Commissioner shall decline to take further action on a complaint when satisfied that:

- (a) the subject matter of a complaint is frivolous or vexatious;
- (b) the actions or conduct complained about do not fall within the scope of the Act;
- (c) the complaint has been abandoned by the complainant; or

(d) there is insufficient evidence supporting the complaint to justify referring it to a judge for a public hearing.

When the Commissioner declines to take further action on a complaint, the complainant has the right to appeal. That appeal must be filed within 30 days after the Commissioner's notice has been sent. Appeals at the Provincial Court level are arranged by LERA without cost to the appellant. Appeals are heard by a provincial judge, whose decision on the matter is final.

### **Abuse of Police Authority Is Defined As:**

Section 29 of the Act defines abuse of authority as follows. A member commits a disciplinary default when he affects the complainant or any other person by means of any of the following acts or omissions arising out of or in the execution of his duties:

- Making an arrest without reasonable or probable grounds.
- Using unnecessary violence or excessive force.
- Using oppressive or abusive conduct or language.
- Being discourteous or uncivil.
- Seeking improper pecuniary or personal advantage.
- Without authorization, serving or executing documents in a civil process.
- Discriminating on the basis of race, nationality, religion, colour, sex, marital status, physical or mental handicap, age, source of income, family status, political belief, or ethnic or national origin.
- Making a false statement, or destroying, concealing, or altering any official document or record.
- Improperly disclosing any information acquired as a member of the police department.
- failing to exercise discretion or restraint in the use and care of firearms.
- Damaging property or failing to report the damage.
- Being present and failing to assist any person in circumstances where there is a clear danger to the safety of that person or the security of that person's property.
- Violating the privacy of any person within the meaning of The Privacy Act.
- Contravening this Act or any other regulation under this Act, except where the Act or regulation provides a separate penalty for the contravention.
- Assisting any person in committing a disciplinary default, or counselling or procuring another person to commit a disciplinary default.

### **Potential Penalties for Abuse of Authority:**

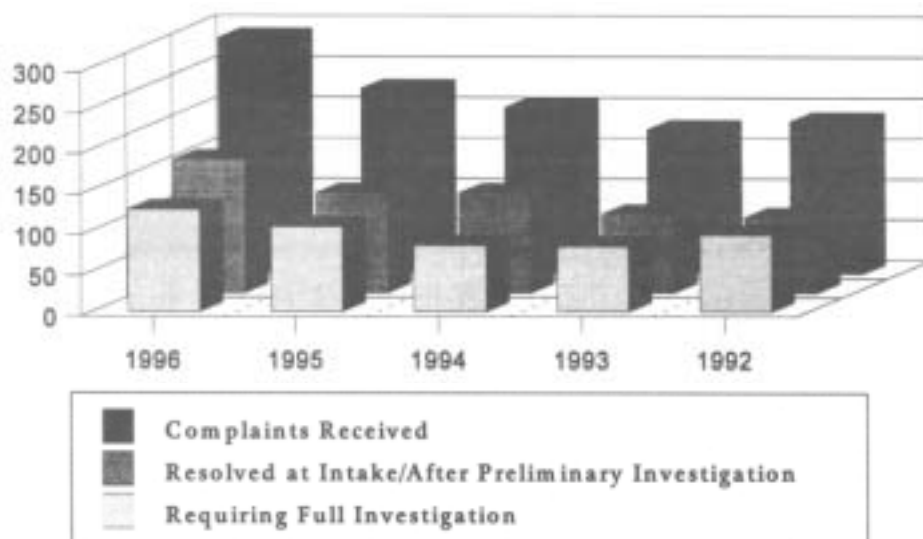
The potential penalties for an officer found guilty of any of the above disciplinary defaults are set out in the Act in diminishing order of seriousness, as follows:

- Dismissal
- Permission to resign and, in default of resignation within seven days, summary dismissal.
- Reduction in rank.
- Suspension without pay up to a maximum of 30 days.
- Forfeiture of pay up to a maximum of ten days pay.
- Forfeiture of leave or days off not to exceed 10 days.
- A written reprimand.
- A verbal reprimand.
- An admonition.

## 1996 STATISTICAL REPORT - DATA TABLES

<b>Table 1-Public Complaints</b>	<b>1996</b>	<b>1995</b>	<b>1994</b>	<b>1993</b>	<b>1992</b>
Complaints Received	290	228	205	178	188
Resolved at Intake/After Preliminary Investigation	164(57%)	123(54%)	123(60%)	97(55%)	93(49%)
Requiring Full Investigation	126(43%)	105(46%)	82(40%)	81(45%)	95(51%)

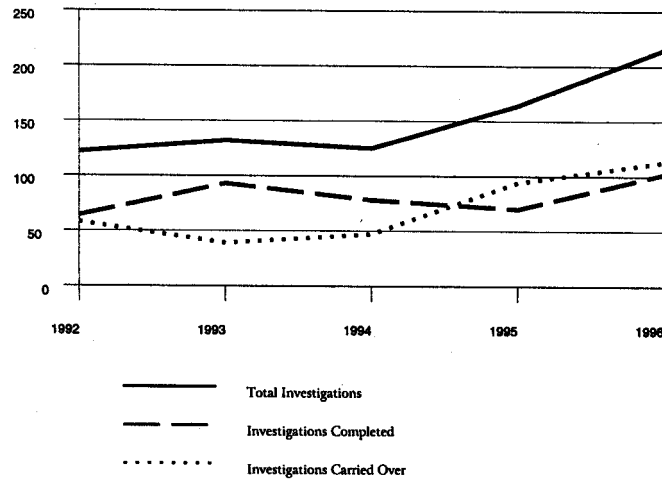
### Increase in Complaints



<b>Table 2-Investigations Conducted</b>	<b>1996</b>	<b>1995</b>	<b>1994</b>	<b>1993</b>	<b>1992</b>
Total Investigations	215	164	125	132	122
Investigations Completed-Files Closed	102(47%)	70(43%)	78(62%)	93(70%)	64(52%)
Ongoing Investigations Carried Over	113 (53%)	94(57%)	47 (38%)	39(30%)	58(48%)



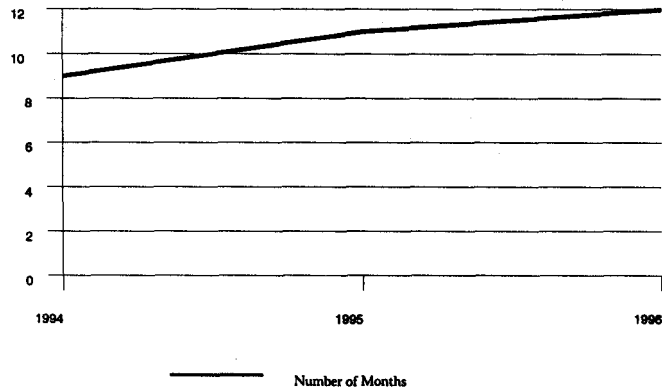
### Investigations Conducted



**Table 3-Length of Time to Complete Investigations**

	<b>1996</b> <b>(n=102)</b>	<b>1995</b> <b>(n=70)</b>	<b>1994</b> <b>(n=79)</b>
1 - 3 Months	5 (5%)	3 (4%)	14(18%)
4 - 7 Months	14(14%)	17(25%)	27(35%)
8 - 12 Months	36(35%)	26(37%)	20(26%)
13 - 18 Months	37(36%)	18(26%)	7 (9%)
19 - 23 Months	8 (8%)	5 (7%)	6 (7%)
24 + Months	2 (2%)	1 %	4 (5%)
<b>AVERAGE:</b>	<b>12 Months</b>	11 Months	<b>9 Months</b>

### Average Time to Complete Investigations



<b>Table 4- Complainant Demographics</b>	<b>1996 (n=126)</b>	<b>1995 (n=105)</b>	<b>1994 (n=105)</b>	<b>1993 (n=81)</b>	<b>1992 (n=95)</b>
<b>Sex</b>					
Male	98(78%)	77(73%)	53(65%)	55(68%)	73(77%)
Female	28(22%)	28(27%)	29(35%)	26(32%)	22(23%)
<b>Age</b>					
Over 50	11 (9%)	9 (9%)	8(10%)	5 (6%)	7 (7%)
40 - 49	15(12%)	13(12%)	17(21%)	18(22%)	17(18%)
30 - 39	35 (28%)	26(25%)	17(21%)	28(35%)	25(27%)
18- 29	43(34%)	32(31%)	25(30%)	26(32%)	38(40%)
Youths under 18	10 (7%)	11(10%)	2 (2%)	4 (5%)	8 (8%)
Birth dates N/A	12(10%)	14(14%)	13(16%)		

<b>Table 5-Legal Involvement of Complainants</b>	<b>1996 126</b>	<b>1995 105</b>	<b>1994</b>	<b>1993</b>	<b>1992</b>
No Charges	46(37%)	42(40%)	35(43%)	38(47%)	44(46%)
Traffic Offences	16(13%)	13(12%)	10(12%)	8(10%)	8 (8%)
Property Offences	12 (9%)	11 (10%)	10(12%)	5 (6%)	9(10%)
Intoxicated Persons Detention	13(10%)	12(11%)	2 (2%)	5 (6%)	5 (5%)
Cause Disturbance	4 (3%)	2 (2%)	2 (2%)	0 (0%)	3 (3%)
Assault Police Officer/Resist Arrest	5 (4%)	2 (2%)	0 (0%)	3 (4%)	3 (3%)
Impaired Driving	3 (2%)	5 (5%)	2 (2%)	4 (5%)	3 (3%)
Offences Against Another Person	10 (8%)	6 (6%)	4 (5%)	5 (6%)	7 (7%)
Domestic Disputes	7 (6%)	3 (3%)	6 (8%)	2 (2%)	2 (2%)
Other	10 (8%)	9 (9%)	11(14%)	11(14%)	11(12%)

<b>Table 6- Complainants Allegations</b>	<b>1996</b>	<b>1995</b>	<b>1994</b>	<b>1993</b>	<b>1992</b>
Abuse of authority	5	14	9	19	16
Arrest without reasonable or probable grounds	4	6	4	6	14
Using unnecessary or excessive force	69	45	37	29	43
Using oppressive or abusive conduct or language	94	51	38	19	36
Being discourteous or uncivil	44	35	30	19	24
Seeking improper personal advantage	4	0	1	0	1
Serving civil documents without proper authorization	0	0	0	0	0
Discrimination (age, race, sex, all types)	2	5	4	4	6
Making false statement(s)	3	4	3	1	0
Improperly disclosing information	0	2	3	2	4
Failing to exercise care or restraint in use of firearm	3	0	0	2	1
Damaging property or failing to report damage	4	3	4	2	1
Failing to provide assistance to person(s) in danger	8	8	6	5	1
Violating persons privacy (under The Privacy Act)	0	0	1	1	0
Contravening The Law Enforcement Review Act	0	0	0	0	0

**Note: Complainants often allege more than one type of misconduct.**

<b>Table 7-Incidents Alleging Misuse of Pepper Spray</b>		
<b>1996</b> (n=13)	<b>1995</b> (n=13)	<b>1994</b> (n=14)
10% of 126 Complaints Investigated	12% of 105 Complaints Investigated	17% of 82 Complaints Investigated
<b>Police Service</b>	<b>Police Service</b>	<b>Police Service</b>
Winnipeg= 13	Winnipeg= 12 Altona= 1	Winnipeg= 12 Brandon= 1 Rivers= 1

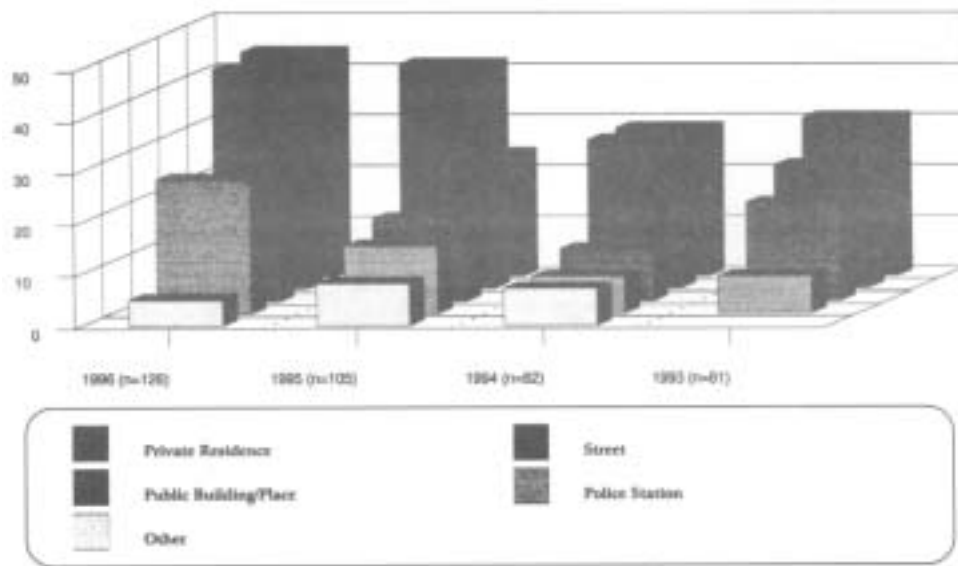
<b>Table 8 - Incidents Alleging Misuse of Handcuffs</b>	
<b>1996</b> (n=12)	<b>1995</b> (n=10)
10% of 126 Complaints Investigated	10% of 105 Complaints Investigated
<b>Police Service</b>	<b>Police Service</b>
Winnipeg= 10 Brandon=2	Winnipeg=8 Brandon=2

<b>Table 9 - Incidents Alleging Injuries From Use of Force</b>		
<b>1996</b> (n=67)	<b>1995</b> (n=44)	<b>1994</b> (n=23)
53% of 126 Complaints Investigated	42% of 105 Complaints Investigated	28% of 82 Complaints Investigated
<b>Police Service</b>	<b>Police Service</b>	<b>Police Service</b>

Winnipeg=64 Brandon=3	Winnipeg=38 Brandon=5 Altona= 1	Winnipeg=21 Brandon= 1 Rivers= 1
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<b>Table 10-Location of Incident</b>	<b>1996 (n=126)</b>	<b>1995 (n=105)</b>	<b>1994 (n=82)</b>	<b>1993 (n=81)</b>	<b>1992 (n=95)</b>
Private Residence	44(35%)	24(23%)	29(35%)	31 (38%)	38(40%)
Street	43(34%)	44(42%)	29(35%)	24(30%)	29(31%)
Public Building/Place	8 (6%)	16(15%)	10(12%)	19(23%)	24(25%)
Police Station	26(21%)	13(12%)	7 (9%)	7 (9%)	4 (4%)
Other	5 (4%)	8 (8%)	7 (9%)	N/A	N/A

**Location of Incident**



<b>Table 11 Police Service</b>	<b>1996 (n=126)</b>	<b>1995 (n=105)</b>	<b>1994 (n=82)</b>	<b>1993 (n=81)</b>	<b>1992 (n=95)</b>
Altona	0 (0%)	2 (2%)	0 (0%)	0 (0%)	0 (0%)
Brandon	14(10%)	16(15%)	14(17%)	10(12%)	6 (6%)
RM Cornwallis	0 (0%)	0 (0%)	0 (0%)	1 (1%)	0 (0%)
RM East St. Paul	2 (2%)	1 (1%)	0 (0%)	0 (0%)	0 (0%)
Morden	0 (0%)	0 (0%)	0 (0%)	1 (1%)	0 (0%)
Rivers	0 (0%)	0 (0%)	1 (1%)	0 (0%)	0 (0%)
Ste. Anne	2 (2%)	0 (0%)	0 (0%)	(1%)	0 (0%)
RM St. Clements	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
RM Victoria Beach	0 (0%)	0 (0%)	0 (0%)	0 (0%)	0 (0%)
Winkler	1 (1%)	0 (0%)	2 (2%)	0 (0%)	0 (0%)
Winnipeg	107(85%)	86(82%)	64(79%)	68(85%)	89(94%)
Other	0 (0%)	0 (0%)	1 (1%)	0 (0%)	0 (0%)

<b>Table 12-Disposition of Complaints</b>	<b>1996 (n=102)</b>	<b>1995 (n=70)</b>	<b>1994 (n=78)</b>	<b>1993 (n=93)</b>	<b>1992 (n=64)</b>
Dismissed by Commissioner as Outside Scope of Act	1 (1%)	2 (3%)	0 (0%)	2 (2%)	0 (0%)
Dismissed by Commissioner as Frivolous or Vexatious	14(14%)	11(17%)	11(14%)	8 (9%)	5 (8%)
Dismissed by Commissioner as Not Supported by Sufficient Evidence to Justify a Hearing	46(45%)	24(34%)	30(38%)	19(20%)	0 (0%)
Abandoned or Withdrawn by Complainant	36(35%)	24(34%)	34(43%)	54(57%)	42(66%)
Resolved Informally	4 (4%)	7(10%)	3 (4%)	8 (9%)	14(22%)
Public Hearing Before a Provincial Court Judge	1 (1%)	1 (1%)	0 (0%)	1 (1%)	2 (3%)
Admission of Guilt by Respondent Officer	0 (0%)	1 (1%)	0 (0%)	1 (1%)	1 (1%)

<b>Table 13-Appeals of Commissioner's Decisions</b>	<b>1996</b>	<b>1995</b>	<b>1994</b>	<b>1993</b>	<b>1992</b>
	<b>N/A</b>	<b>(n=1)</b>	<b>(n=1)</b>	<b>(n=3)</b>	<b>(n=2)</b>

Results of 1996 appeals will be reported in 1997.

<b>Table 14- Referrals to Crown for Criminal Investigation</b>	<b>1996</b>	<b>1995</b>	<b>1994</b>	<b>1993</b>	<b>1992</b>
	<b>N/A</b>	<b>(n=4)</b>	<b>(n=2)</b>	<b>(n=0)</b>	<b>(n=7)</b>

Results of 1996 referrals will be reported in 1997.



## Data Analysis

- Public complaints received by LERA have risen by over 60% in the past five years. I expect that there are multiple reasons for this increase, one being that LERA is becoming a better known and more publicly recognizable agency resulting in more people using our services. Another reason could be that Canadians generally are becoming more aware of and concerned about their civil and legal rights.
- The number of complaints resolved at the intake level or after only preliminary investigation have remained fairly stable over time at just over 50%. This suggests that our intake procedures are working effectively to answer public inquiries and weed out marginal complaints.
- The number of investigations conducted over the past five years have risen fairly consistently. This is not surprising given the increase in complaints received over this time period.
- Investigations completed and those carried over at year end have fluctuated over time. This performance indicator is influenced by factors such as workload, staffing complements, retirements, and new inexperienced personnel coming on staff.
- The length of time taken to complete investigations has risen steadily over the past 3 years. This performance indicator is of great concern to a public agency such as ours. I believe that this performance indicator has been influenced primarily by workload increases, dysfunctional reporting lines, reduced staffing complements, and a high level of staff turnover.
- Complainant demographics remain fairly consistent over time, with adult males continuing to representing the majority of complainants. This is consistent with other criminological data, which indicates that male involvement in crime and with police generally far exceeds that of female involvement. Most involvement takes place in the adult age groups 18 and 40, while older and more youthful involvement is generally less prominent.
- Data on the legal involvement of complainants consistently indicate that the largest number of complainants have no legal involvement, meaning they have not been charged with any offence related to the incident being complained about. This finding always surprises me, but continues to suggest that factors other than criminal involvement are leading causes of complaints.

Our experience and data continue to indicate that three behavioral factors strongly influence public complaints arising from interactions with police.

- (1) the manner in which police interact with the complainant,
- (2) the officers' attitude towards the complainant,
- (3) the amount of force used by police during the interaction.

This finding is supported by data, which indicate that the combined categories of abusive conduct or language and discourteous or uncivil behavior represent the largest numbers of allegations of misconduct made by complainants against the police. This suggests to me that it would serve the police well if they spent more time training their personnel in areas of public and community relations.

- There is a disturbing increase in the number of complainants alleging unnecessary or excessive use of force or outright assault by police, and in the number of reported injuries resulting from the use of force.

Some possible explanations for this finding are an increase in gang-related activity which is more prone to violence and violent reactions. Some of these complaints involved high-speed stolen-car chases that ended in crashes, resulting in injuries that were attributed to police actions. Other complaints of this nature involved persons who were psychotic, drugged-up, or intoxicated and fought with or violently

resisted the police when arrested. Some of these complaints were dismissed as vexatious, most did not have sufficient evidence to justify further action, and a few of the more serious cases went to the Crown for investigation.

- Two factors that often contribute to complaints alleging injury from use of force are the improper use of pepper spray and the inappropriate application of handcuffs. Both of these actions are matters that the police themselves can and should control through adequate training, policy and practice.

It should be noted that Winnipeg and other municipal police services have recently adopted some very positive and proactive policies with respect to the use of pepper spray. These actions should serve to reduce the number of complaints arising from the improper use of pepper spray. These are concerns that my office will continue to monitor.

- Data on the location of incidents complained about show an increase in the number of incidents occurring while people are in custody at police stations. This finding has some disturbing elements, in that many complaints in this category involve allegations of excessive use of force or outright assault resulting in prisoner injury.

My office has also noticed some systemic problems related to this type of complaint. One is the often incomplete records relating to prisoner injuries. It is not unusual for us to find that prisoner injury reports are either not completed or are missing when we request copies of related police reports.

Another problem relates to the lack of adequate video or audio recording devices in police vehicles and interview rooms. In most cases, there is a total absence of any recorded information. Despite past recommendations by the Courts and agencies such as LERA, I see little evidence of this technology being utilized by police at this time.

A third organizational deficiency is inadequate documentation by supervising officers at local police detachments. It has been our experience that supervising officers often do not adequately view prisoners when they arrive at or leave a detachment office. Also, the procedure for viewing and interviewing prisoners by supervising officers seems to be inappropriate in many instances.

I recommend that supervising officers be required to speak privately with arrestees on admission, and on release from detachment offices. I further recommend that a record be kept of any complaints or problems identified by the prisoner or the supervising officer. In particular, allegations or evidence of prisoner injury or abuse should be investigated and documented at the scene.

- Data on police services involved in LERA complaints indicate that most incidents occur in the larger urban centers with a few isolated occurrences in smaller more rural communities. This finding appears normal given the larger populations and social complexities of the larger urban centres.
- Findings on the disposition of complaints indicate that very few complaints are dismissed by the commissioner as Out of Scope. This finding suggests that the intake procedures are operating effectively to answer citizen inquiries, and weed out complaints that might fall into this category.
- Complaints dismissed as frivolous or vexatious seem to have levelled off in the mid-teen percentile range. There are little or no data with which we can compare this variable to determine if it is a normal finding for public complaints of this nature.

Complaints dismissed by the Commissioner as not supported by sufficient evidence to justify a hearing have increased over time. One factor affecting this finding is our increasing familiarity with the LERA legislation and processes. Other factors that influence this finding are legal precedents and court rulings on LERA cases that have helped to define the legislation, and the manner in which the courts are

interpreting it.

- Complaints that are abandoned or withdrawn by the complainant seem to be levelling off at about one third of complaints investigated. I have no data with which to compare this finding, so I do not know if our numbers are high, low, or average for this type of public complaint. There are, however, several factors that can influence this finding.
  - (i) During the course of an investigation, it may become apparent that there is insufficient evidence supporting the complaint, or that the complaint is frivolous or vexatious. This sometimes results in complainants abandoning or withdrawing their complaints.
  - (ii) For some people simply having their concerns taken seriously and looked into is enough, and they simply withdraw their complaints without wanting any further action.
  - (iii) Some complainants are transient, resulting in them moving about without contacting LERA or without leaving forwarding addresses. When attempts to contact these complainants are unsuccessful, their files are closed as abandoned.
- Complaints resolved informally continue to be relatively small in number. One reason for this may be a lack of professional mediation services available to LERA. Another reason is the often adversarial and emotionally complex nature of many of LERA complaints. Nonetheless, alternative dispute resolution is a useful alternative that we will continue to make available whenever possible.
- Cases referred to public hearings before provincial court judges continue to be very small in number. However, the one case that did go to a hearing in 1996 was interesting in that it established some legal precedents for LERA and gave some definitions to police authority under The Mental Health Act.

The incident started with an individual calling 911 threatening to commit suicide. Police and ambulance were dispatched to the last known address of this individual, who was known to be psychotic and to have attempted suicide in the past. Ambulance attendants arrived first and spoke to an individual at the address, who denied being the caller and denied being suicidal. Ambulance attendants left the scene after determining there was no evidence of an attempted suicide. They told the police what they had found out. They did not determine the identity of the person at the address.

The responding officers decided that they needed to determine who the person at the address was in order to assure themselves that this was not in fact the suicidal caller, who might harm himself once they left, or call 911 again.

Police attended at the address and were permitted in by the resident, who again denied being the 911 caller or being suicidal. Once they looked around, the resident asked them to leave. The respondent officer refused to leave until the resident provided proof of his identity. The resident got upset and started waving his hands about, insisting that the police leave him alone. The respondent officer took hold of the resident's arm and a brief struggle took place. The resident then showed the police his photo ID and they left after trying to explain the reasons for their actions.

As it later turned out, the original caller had moved from this address less than a month ago but had not informed the 911 dispatcher of his new address. This individual was subsequently picked up by another police unit and taken to the Health Sciences Centre.

The complainant in this matter filed a complaint with LERA, alleging that the police had abused their authority and violated his rights by forcing their way into his residence and refusing to leave when asked to do so even though no crime had been committed and the complainant had told them he was not suicidal and had not called 911. He further alleged that the respondent officer had used excessive and unnecessary

force when he grabbed him by the throat during their brief struggle and forced him to produce identification papers.

The respondent officer did not deny that the incident took place and he did not deny forcing the complainant to produce satisfactory identification, citing his authority under The Mental Health Act to do so. He did deny using excessive or unnecessary force, stating that it was the complainant who caused this altercation by refusing to produce identification and getting irate and belligerent with him.

The matter was subsequently referred to the courts for hearing on the merits of the complaint. Judge Cohen heard the case and determined that the police did have extraordinary powers under The Mental Health Act to enter premises and require persons in attendance to identify themselves. He was of the opinion that protection of potentially suicidal or dangerous persons overrode other individual rights in cases such as this. He further determined that the force used was not unnecessary or excessive in this circumstance. The respondent officer was thus exonerated and the matter concluded. The complainant in this case was represented by counsel and no appeal to Judge Cohen's ruling was made.

Interestingly there was a recent Ontario Court of Appeal case (*R. v Godoy*) which dealt with a very similar incident in Ontario in which the court came to a very similar conclusion, thus lending support to Judge Cohen's decision here in Manitoba. There is some indication that the Ontario case may be appealed to the Supreme Court.

- Admissions of guilt by officers involved in LERA complaints continue to be small in number. The principal factor affecting this finding is that respondent officers rarely feel that they have done anything wrong in their handling of the incident being complained about, so why would they admit to wrongdoing if they believe none occurred. Another factor is that officers who may have committed some wrongdoing are highly unlikely to admit to it without the existence of clear and convincing evidence.

In all cases where there was an admission of wrongdoing, the evidence has been virtually irrefutable and the officers involved have been disciplined or the matter has been resolved informally after the officer apologized to the complainant for his conduct.

- All complaints referred to the Crown for criminal investigation under Sec. 35(1) of the Act have involved allegations of assault by officers involved in the incident. These are the most serious complaints LERA deals with and often involve significant bodily injury to the complainant resulting from use of force.

These matters are currently referred by the Crown back to the police service involved for internal investigation. To date, none of the reported cases have resulted in charges being laid. The reason given by the Crown in each case has been insufficient evidence or the unlikelihood of a successful prosecution.

## Conclusion and Recommendations

There are several significant findings contained in this report. One relates to the increase in the number of complaints received and the length of time it is taking my office to complete investigations and report our findings. This situation is not likely to improve until my office is provided with the staff and resources needed to complete our job in a more timely and effective manner.

The current situation is unfair to members of the public, in that they have to wait months and even years for my office to complete its investigations. It is equally unfair to the police officers involved, as complaints can hang over their heads for months on end, sometimes *affecting* their personal lives and careers. Officers under investigation often cannot get promotions or transfers to other duties, and cannot receive meritorious awards until these complaints have been resolved.

A second significant finding is the dramatic increase in the number of complaints alleging excessive or unnecessary use of force, or outright assault by police resulting in bodily injury to the complainants. This finding combined with an increase in the number of complaints alleging that these incidents are occurring while complainants are in custody at police stations is a cause for concern.

A third significant finding is the absence of charges in any of the most serious cases referred to the Crown for criminal investigation by my office. There has not been a charge laid in any of the cases referred by my office in the five years that I have been Commissioner. To the best of my knowledge no charges have been laid by the Crown since LERA has been in existence.

This is a cause for concern as complainants and defense counsel often come back to me alleging that the system is stacked against them in favor of the police and they have no hope of ever seeing justice done.

Justice MacInnes of the Court of Queens Bench in his recent decision on the ROBSON complaint stated:

*"My review of the Act in connection with this application has made me aware of the lack of clarity and consistency within the legislation not just with respect to the phrase "criminal charge" but elsewhere, and I suggest that the Act could be usefully referred to legislative counsel for review and revision."*

I agree but recommend that any review be expanded to include a full examination of our current procedures. Readers should be aware that in 1992 major changes were made to the civilian oversight system in Manitoba. The then Manitoba Police Commission and Law Enforcement Review Board were both disbanded. The Law Enforcement Review Act was significantly amended giving greatly increased responsibilities and powers to the office of the Commissioner. However, administrative responsibility for providing staff and resources to the Commissioner was transferred by the Department of Justice to the Law Enforcement Services Branch, Public Prosecutions Division.

Since that time part-time investigative and support services and budget have been provided to LERA from within by Law Enforcement Services. As acknowledged in my annual reports, the quality and dedication of the people involved has been exceptional. However, they all have other jobs outside LERA, and I as Commissioner have no management control over them as personnel working for LERA. Nor do I have any control over the budget assigned to support my agency. As can be imagined this situation has created problematic situations for myself and for the organization and has in my view seriously challenged my ability to operate an independent or effective agency.

In fairness, I must say that the decisions made in 1992 were made in good faith and with the best of intentions. They were intended to improve the situation as it existed at that time. I am well aware that nothing in life is immutable and change is constant in all organizations. Having worked under the current system for the past five years I believe that it is time to once again review our procedures and make some needed changes.

In that regard, I am pleased to report that executive management within the Department of Justice has recently announced that there will be a review of my current situation. I can only hope that the promised review will take place soon and that its findings will act to provide my office with the resources and independence it needs to operate a truly independent and effective agency.

The following are some recommendations which I believe will improve the current system if implemented.

- (i) Several judges hearing LERA matters have commented that the current standard of proof in our Act is very onerous, perhaps too onerous, for complainants to meet. The record would seem to bear this out.

I recommend that the current standard of proof be changed from "clear and convincing evidence" to the more conventional civil standard of "balance of probabilities".

I further recommend that, since these hearings are disciplinary in nature and not criminal, they be held before an Administrative Tribunal rather than before a provincial judge as is the current practice. I make this recommendation without bias or prejudice towards any judge I have appeared before over the past years. They have without exception been considerate and talented people to work with.

- (ii) Given the seriousness of some of the allegations made and the lack of charges or successful prosecutions under the current system I recommend the establishment within LERA of a Special Investigations Unit (SIU).

This Special Investigations Unit should operate in a manner similar to the SIU in Ontario. However, I do not believe that this has to be a separate entity as we do not have the volume of cases Ontario has. The Ontario SIU investigates deaths that occur at the hands of police, shootings that result in death or injury, and serious allegations of assault or other criminal wrong doing by on duty police officers. If an SIU is established in Manitoba it should have similar expertise and authority to investigate allegations of criminal wrongdoing by on duty police and to lay charges when it is found appropriate to do so.

- (iii) It has been said by some critics of our system that police management does not have enough of a stake in the current complaints process. Others have suggested that LERA should only deal with the more serious allegations of abuse and leave the so-called "lesser complaints" for the complainant and police to deal with at the local level.

Some jurisdictions in Canada and elsewhere around the world have implemented a ranking system for complaints wherein less serious complaints are dealt with by the complainant and police at the local level. The oversight agencies using these models normally monitor the process and act as an appeal mechanism when issues cannot be resolved at the local level.

Our data indicates that the combined categories of abusive conduct or language and discourteous or uncivil behavior represent the largest numbers of allegations of misconduct made by complainants against the police in Manitoba. This type of complaint is considered by many to be a lesser type of complaint.

I recommend that a complaints ranking system be implemented in Manitoba wherein only the most serious public complaints would be investigated by LERA with lesser complaints being dealt with between the complainant and police at the local level. This should, however, be a formalized process and LERA should have the authority to monitor these matters and should serve as the appeal mechanism when the issues cannot be resolved at the local level.

(iv) Given the social and legal significance of the issues LERA deals with I recommend that the agency be granted an independent status similar to the Ombudsman, or the Human Rights Commission. I further recommend that LERA be provided with the human and material resources needed to carry out its duties and responsibilities and that these resources be under the administrative and management control of the Commissioner.

## Acknowledgments

LERA could not function without the cooperation and assistance of the Municipal Police Chiefs and their executives, the police associations, and members of the various police services operating in the province. Their acceptance and support of the public's right to have their grievances heard by an independent, non-police agency such as LERA make this process possible.

Special recognition should be accorded to members of the public, and respondent officers who are able to acknowledge and resolve their differences in an open and informal manner, then put these differences behind them, and move on with life.

Under the present organizational structure within the Department of Justice, LERA as an agency has no staff of its own. This makes the already difficult role of Commissioner even more challenging. It would be impossible without the part-time assistance and support of several staff members in the Law Enforcement Services Branch, and others involved in this process.

I would like to pay special recognition to Judie Roberts who, along with her other duties in Law Enforcement Services, provides principal clerical support for LERA. Day in day out, week after week and year after year Judie puts forth a seemingly endless effort which may not be fully rewarded, but is greatly appreciated.

Michele Dupuis, Carol Stoik, Dixie Walters and Jodie Cahoon also provided much-needed support wherever they could. Their always cheerful assistance and support is recognized and much appreciated.

Gerry Ferguson chose this time in life to retire from government service. I would like to take this opportunity to thank him for the invaluable work he did on behalf of LERA over the years. I wish him and his wife Betty a long, happy and healthy retirement.

Two new investigators, Mr. George Wright and Mr. Ron Forgeron, have been assigned by the Director of Law Enforcement Services to conduct investigations for LERA. George and Ron recently retired from the RCMP, each having over thirty years policing experience. Their experience and knowledge is already proving invaluable and their assistance is greatly welcomed and appreciated.

Neville Shende Q.C., Deputy Director, Civil Legal Services continues to provide solid legal counsel, and sound advice. Neville is the person I most often turn to in complex and difficult cases, or when I am the one needing counsel. He has never let me down.

The production of this annual report would not have been possible without the efforts of Rhodel Dunn. Ms. Dunn is a third year law student employed as a STEP Student for the summer of 1997. Her principal duties were to assist in the production of this, and other long-overdue annual reports. My thanks go to her for a good job well done, and to Wyman Sangster, Director of Public Safety for arranging and providing this much needed assistance.

Without the support of all these people and others involved in this process, LERA could not and should not continue to function.

Feedback from readers is both welcomed and encouraged.

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