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Manitoba 

**Annual Report  
1995**

**Office of the Commissioner  
Law Enforcement Review Agency**



Includes 10% post-consumer waste





**Minister of Justice**

**Attorney General**

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

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

May It Please Your Honour:

It is my pleasure to present the 1995 Annual Report of the Law Enforcement Review Agency. This report details the Commission's accomplishments and activities for the twelve-month period from January 1, 1995 to December 31, 1995.

I trust this meets with your approval.

Respectfully submitted,

A handwritten signature in cursive script that reads "V. Toews".

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

Attorney General



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

Dear Minister:

I am pleased to submit my report for the period January 1, 1995 to December 31, 1995 in accordance with Section 45 of The Law Enforcement Review Act.

I trust this meets with your approval.

Respectfully submitted,

A handwritten signature in black ink, which reads "Norman Ralph". The signature is written in a cursive, flowing style.

Norman C. Ralph, BA,  
MPA Commissioner



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# Civilian Oversight of Law Enforcement In Canada

Civilian oversight of law enforcement in Canada took a great step forward in Victoria, British Columbia in September 1995, with the establishment of the Canadian Association for Civilian Oversight of Law Enforcement (CACOLE).

This new body brings together many of the federal, provincial, municipal and First Nations agencies active in the field. I am pleased to report that as Commissioner of Manitoba's Law Enforcement Review Agency, I was a founding and charter member of the Board of Directors for CACOLE.

Civilian oversight of law enforcement comes in various forms and takes a number of different approaches in Canada and around the world. There is no one size that fits all model for civilian oversight. The process must be adapted to fit local environments and requirements if it is to work and be effective. Some civilian oversight agencies operate as police commissions with primary responsibility for fiscal control, policy development and executive management of police services. Some like LERA deal exclusively with public complaints and the identification of systemic problems that may arise from time to time. Internal, day-to-day operational and management decisions invariably, and properly, fall under the control and authority of the local Chief of Police.

There are no municipal or provincial police commissions operating in Manitoba at this time, although they do exist in several other provinces. Fiscal and civic authority over police at the municipal level in Manitoba is generally assigned to elected councillors or a civic committee responsible for public safety. The Minister of Justice is the chief law enforcement officer for the province and, as such, has legislative authority over policing services in Manitoba.

The principal rationale for civilian oversight is to allow for an independent review of public concerns. An independent non-police agency such as LERA is designed to give confidence to the public and police that complaints are being properly investigated and no coverups of police misconduct are taking place. LERA is also given an ombudsman-like power to identify and recommend or report on any systemic problems that may arise from time to time. The process is based on legislation that protects the civil and legal rights of the complainant as well as the respondent. If properly operated civilian oversight can also serve to reduce the likelihood and number of costly civil suits against police and their employing authorities.

Canada's national police force, the RCMP, has its own Public Complaints Commission. The Honorable JeanPierre Beaulne, Q.C., is Chairman of the RCMP Public Complaints Commission. Judge Beaulne was quoted in a recent CACOLE communique as saying:

*"You may wonder why I chose to leave the leave relative peacefulness - la quiétude- of the Bench in October 1992, where I could have continued sitting for a number of years, to embark on this course. In fact, you may wonder why any judge would do so! Well, I had been sitting for 25 years. I was informed that the then Prime Minister was interested in appointing me to the Chairmanship - so I therefore asked for material relating to the Commission, which was relatively new. I became engrossed in the topic and decided that it was a most important venture for the quality of life of Canadians, perhaps the most important. I therefore accepted the appointment and the past four years has confirmed the wisdom of my decision."*

I agree with Judge Beaulne's sentiment that civilian oversight of police is a most important venture, with tremendous potential to favorably affect our quality of life. One has only to reflect briefly on the negative impact state-run police agencies have had on civilian populations in many non-democratic and emerging democratic states, or the impact in democratic states when police become corrupt, or out of control, to appreciate the wisdom behind Judge Beaulne's comments.

We are indeed fortunate that our democratic institutions are strong in Canada and that our police forces generally operate with a high degree of professionalism and civic responsibility. Whatever form civilian oversight of law enforcement takes, it is clearly an essential public service that can pay dividends to Canadian society in many different ways.



# 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, 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 part-time by 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.

### **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.

### **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.

### **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 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:**

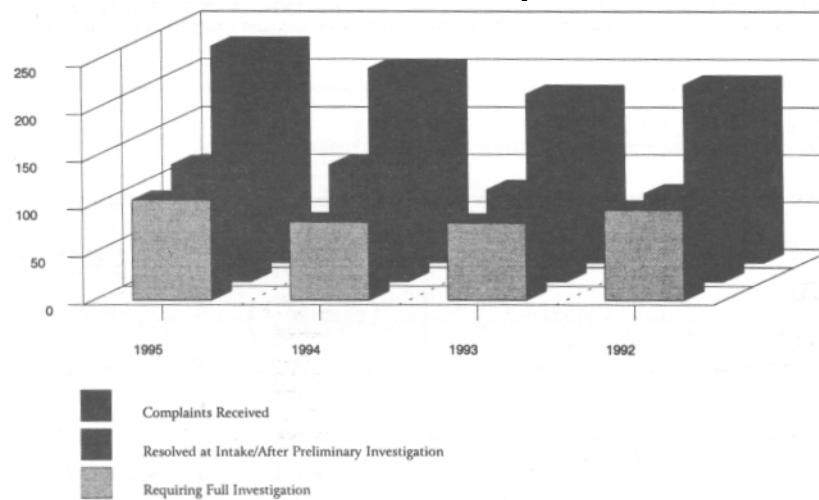
The potential penalties for an officer found guilty of any of the above disciplinary defaults are set out in the Act in diminishing order of seriousness as follows.

- 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.

# 1995 STATISTICAL REPORT - DATA TABLES

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

**Increase in Complaints**



<b>Table 2-Investigations Conducted</b>	<b>1995</b>	<b>1994</b>	<b>1993</b>	<b>1992</b>
Total Investigations	165	125	132	122
Investigations Completed-Files Closed	71(43%)	78(62%)	93 (70%)	64(52%)
Ongoing Investigations Carried Over	94(57%)	47(38%)	39(30%)	58(48%)

<b>Table 3-Length of Time to Complete Investigations</b>		
	<b>1995 (n= 71)</b>	<b>1994 (n= 79)</b>
<b>1 - 3 Months</b>	3 (4%)	14(18%)
<b>4 - 7 Months</b>	17(24%)	27(35%)
<b>8 - 12 Months</b>	27(38%)	20(26%)
<b>13 - 18 Months</b>	18(26%)	7 (9%)
<b>19 - 23 Months</b>	5 (7%)	6 (7%)
<b>24+ Months</b>	1 (1%)	4 (5%)
<b>AVERAGE:</b>	<b>11 Months</b>	<b>9 Months</b>

<b>Table 4- Complainant Demographics</b>	<b>1995 (n=105)</b>	<b>1994 (n=82)</b>	<b>1993 (n=81)</b>	<b>1992 (n=95)</b>
<b>Sex</b>				
Male	77(73%)	53(65%)	55(68%)	73(77%)
Female	28(27%)	29(35%)	26(32%)	22(23%)
<b>Age</b>				
Over 50	9 (9%)	8(10%)	5 (6%)	7 (7%)
40 - 49	13(12%)	17(21%)	18(22%)	17(18%)
30 - 39	26(25%)	17(21%)	28(35%)	25(27%)
18 - 29	32(31%)	25(30%)	26(32%)	38(40%)
Youths under 18	11(10%)	2 (2%)	4 (5%)	8(8%)
Birthdates N/A	14(14%)	13(16%)		

<b>Table 5-Legal Involvement of Complainants</b>	<b>1995 (n=105)</b>	<b>1994 (n=82)</b>	<b>1993 (n=81)</b>	<b>1992 (n=95)</b>
No Charges	42(40%)	35(43%)	38(47%)	44(46%)
Traffic Offences	13(12%)	10(12%)	8(10%)	8 (8%)
Property Offences	11 (10%)	10(12%)	5 (6%)	9(10%)
Intoxicated Persons Detention	12(11%)	2 (2%)	5 (6%)	5 (5%)
Cause Disturbance	2 (2%)	2 (2%)	0 (0%)	3 (3%)
Assault Police Officer/Resist Arrest	2 (2%)	0 (0%)	3 (4%)	3 (3%)
Impaired Driving	5 (5%)	2 (2%)	4 (5%)	3 (3%)
Offences Against Another Person	6 (6%)	4 (5%)	5 (6%)	7 (7%)
Domestic Disputes	3 (3%)	6 (8%)	2 (2%)	2. (2%)
Other	9 (9%)	11(14%)	11(14%)	11 (12%)

<b>Table 6-Complainant Allegations</b>	<b>1995</b>	<b>1994</b>	<b>1993</b>	<b>1992</b>
Abuse of authority	14	9	19	16
Arrest without reasonable or probable grounds	6		6	14
Using unnecessary or excessive force	45	37	29	43
Using oppressive or abusive conduct or language	51	38	19	36
Being discourteous or uncivil	35	30	19	24
Seeking improper personal advantage	0	1	0	1
Serving civil documents without proper authorization	0	0	0	0
Discrimination (age, race, sex, all types)	5	4		
Making false statement(s)	4	3	1	0
Improperly disclosing information	2	3	2	4

<b>Table 6-Complainant Allegations</b>	<b>1995</b>	<b>1994</b>	<b>1993</b>	<b>1992</b>
Failing to exercise care or restraint in use of firearm	0	0	2	1
Damaging property or failing to report damage		4	2	1
Failing to provide assistance to person(s) in danger	8	6	5	1
Violating a persons privacy (under The Privacy Act)	0	1	1	0
Contravening The Law Enforcement Review Act	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>1995 (n=13)</b>	<b>1994 (n=14)</b>
12% of 105 Complaints Investigated	17% of 82 Complaints Investigated
<b>Police Service</b>	<b>Police Service</b>
Winnipeg= 12 Altona= 1	Winnipeg= 12 Brandon= 1 Rivers= 1

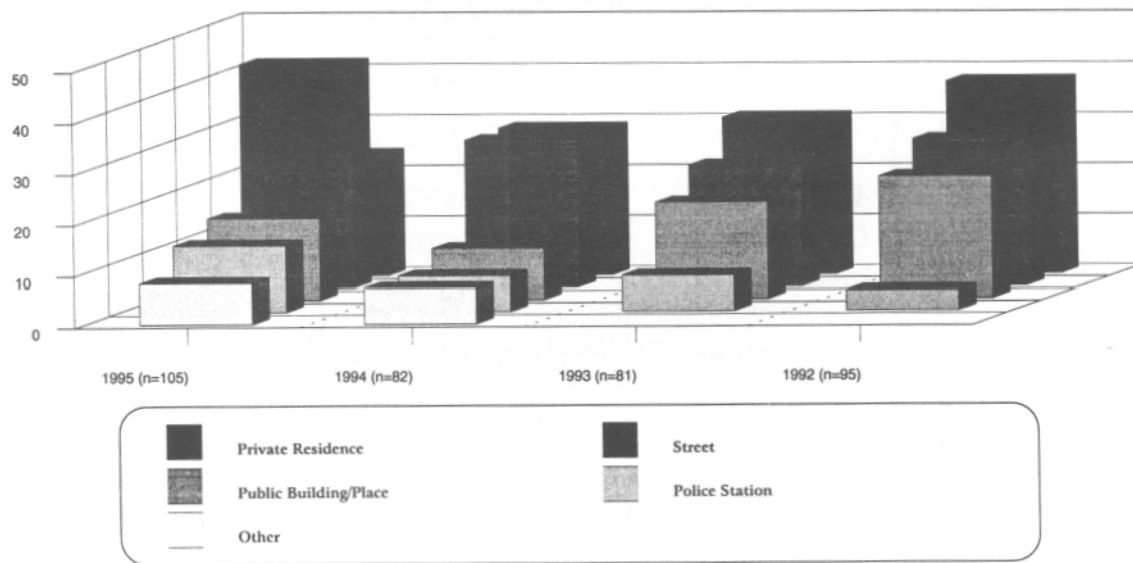


<b>Table 8-Incidents Alleging Misuse of Handcuffs</b>	<b>1995 (n=10)</b>	<b>Police Service</b>
	10% of 105 Complaints Investigated	Winnipeg=8 Brandon=2

<b>Table 9-Incidents Alleging Injuries from Use of Force</b>	
<b>1995 (n=44)</b>	<b>1994 (n=23)</b>
42% of 105 Complaints Investigated	28% of 82 Complaints Investigated
<b>Police Service</b>	<b>Police Service</b>
Winnipeg=38 Brandon=5 Altona= 1	Winnipeg=21 Brandon= 1 Rivers= 1

<b>Table 10-Location of Incident</b>	<b>1995 (n=105)</b>	<b>1994 (n=82)</b>	<b>1993 (n=81)</b>	<b>1992 (n=95)</b>
Private Residence	24(23%)	29(35%)	31 (38%)	38(40%)
Street	44(42%)	29(35%)	24(30%)	29(31%)
Public Building/Place	16(15%)	10(12%)	19(23%)	24(25%)
Police Station	13(12%)	7 (9%)	7 (9%)	4 (4%)
Other	8 (8%)	7 (9%)	N/A	N/A

**Location of Incident**



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

<b>Table 12-Disposition of Complaints</b>	<b>1995 (n=71)</b>	<b>1994 (n=78)</b>	<b>1993 (n=93)</b>	<b>1992 (n=64)</b>
Dismissed by Commissioner as Outside Scope of Act	2 (3%)	0 (0%)	2 (2%)	0 (0%)
Dismissed by Commissioner as Frivolous or Vexatious	11(15%)	11(14%)	8 (9%)	5 (8%)
Dismissed by Commissioner as Not Supported by Sufficient Evidence to justify a Hearing	24(34%)	30(38%)	19(20%)	0 (0%)
Abandoned or Withdrawn by Complainant	24(34%)	33(43%)	54(57%)	42(66%)
Resolved Informally	7(10%)	3 (4%)	8 (9%)	14(22%)
Public Hearing Before a Provincial Court Judge	2 (3%)	1 (1%)	1 (1%)	2 (3%)
Admission of Guilt by Respondent Officer	1 (1%)	0 (0%)	1 (1%)	1 (1%)

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

The courts have upheld the Commissioner's decisions in all appeals to date.

<b>Table 14-Referrals to Crown</b>	<b>1995</b>	<b>1994</b>	<b>1993</b>	<b>1992</b>
	(n=4)	(n=2)	(n=0)	(n=7)

All cases referred to the Crown over the past four years have involved allegations of assault by police. No charges have been recommended by the Crown in any of these cases. The reasons given for not proceeding in each case was insufficient evidence or the unlikelihood of a successful prosecution.

# Data Analysis

- The data show a fairly steady increase in the number of complaints received over the past couple of years. There are many factors that can influence public response to an agency such as LERA:
  - (i) Increased public awareness of the right to file complaints and seek redress for grievances is reflected in the growth of human rights, Charter of Rights, and ombudsman functions in Canadian society generally.
  - (ii) Increased public awareness of LERA as an operating agency in Manitoba.
  - (iii) Proactive policing initiatives such as increased presence of police on street patrol, special operations such as street-gang units, police sweeps in high-crime areas. The increase in the number of complaints arising from street related activity, as seen in Table 10, indicates some support for this conclusion.
- Tables 2 and 3 indicate an increase in the length of time it is taking our office to complete investigations, along with a decline in the number of investigations completed.

Several factors have influenced our ability to complete investigations in a more timely fashion. One factor is the increase in complaints being received by our office, which increases our workload and results in growing backlogs of complaints under investigation.

Another factor was the retirement of a senior LERA investigator in 1994, and the resignation of a part time investigator in 1995. These investigators were not replaced, leaving LERA very short-staffed. Despite repeated requests, no additional staff or other assistance has been provided to my office over the past two years.

- Table 4 indicates that while still in the minority when compared with adult complainants, the number of young persons under 18 filing complaints has increased somewhat.

I am of the opinion that the single most important factor influencing this statistic is the increase in youth related street gangs, combined with increased police response to this gang-related activity. This situation is not likely to change unless and until youth/street gang activity subsides.

The largest single grouping of people filing complaints with LERA continues to be persons who have not been charged with an offence. This suggests that it is often something other than being charged that causes a person to complain about police conduct.

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.

These concerns were reflected in a statement made to me by a senior police officer, who said that the single biggest improvement he would like to see in police service is an improvement in the public-relations training and skills of officers dealing with the public. This clearly is an area of training and service that the police could usefully work on.

- Allegations of police misconduct made by citizens suggests two principal areas of concern. The most often cited reason for filing complaints is attitudinal. This type of complaint alleges that the officers involved have been rude, discourteous or oppressive when dealing with the complainant.

While this raises concerns about the civility of interactions between the police and public, I would be remiss in my duty if I left readers with the impression that this is a one-sided issue.

As can be imagined, incidents involving the police are often emotionally charged and tense situations. Quite often, it is not only the officers involved who are rude, discourteous or uncivil. Complainants are also found to be at fault in this regard as well. Notwithstanding the above, police officers are the on-duty, professional personnel present at these incidents and, as such, must take primary responsibility for control and conduct of the situation.

- The second most common reason for filing complaints are allegations of unnecessary or excessive use of force by officers involved. This is a growing concern for my office, as these are generally the most serious complaints we have to deal with.

These complaints generally involve two types of allegations. One is an allegation of outright assault by the officer(s) involved. This type of allegation is often dismissed after investigation, either because the evidence does not support the allegation or there is insufficient evidence to justify sending the matter to a public hearing. There are, however, some cases every year that raise sufficient concern to have the matters referred to the Crown for possible criminal charges.

The issue of excessive or unnecessary use of force is a growing concern for my office. I will continue to track and report on this finding.

- Allegations that police are failing to provide assistance have shown an increase over the past four years. This can be a very serious allegation if people or property are in clear danger and the police fail to provide assistance. This does happen from time to time but, fortunately it is rare in our experience.

Our experience indicates that the principal reasons behind an increase in this type of complaint are changes in policy wherein police are increasingly declining to charge persons involved in so-called common/mutual assaults.

Police often advise disputants in these incidents to file private prosecutions. As often happens, one of the parties takes exception to this decision by the police, feeling that he/she was assaulted, and files a complaint with LERA alleging that the police failed to provide needed assistance. While this change in policy seems disturbing to some members of the public, it appears to have support from the crown prosecutors office, as well as the police.

Other situations where this type of complaint arises are instances of break and enter, stolen property, or alleged harassment where there is little evidence of the perpetrator. Police may or may not actively investigate these reports, often citing workload problems. The aggrieved party then gets upset with the lack of police support and files a complaint alleging that the police failed to provide necessary assistance.

The issue of police discretion is a grey area in law enforcement. I am very reluctant to act in most of these situations and often refer these complaints back to the officer in charge for review of the incident. I firmly believe that allowing the officer on the scene some discretion to make decisions based on his or her experience is an essential element of police work that should not be tampered with without just cause. The public needs to understand and accept that the police do have legitimate powers of discretion and the right to exercise that discretion.

Recent police actions requiring citizens to file complaints in person at local community-based police offices may affect this finding in the future. I will continue to monitor and report on this statistic.

- Data reporting allegations of misuse of firearms by police are very positive. Use of firearms is obviously the most deadly level of force that can be used by law enforcement personnel. It is rare in Manitoba for police to have to resort to the use of firearms, and it is gratifying indeed to note the absence of complaints in this area over the past couple of years.

- Data on the location of incidents complained about show a sharp increase in street-related incidents. I am confident that the principal reason behind this finding is the current increase in street gang activity. This situation is not likely to change until gang-related activity is brought under control.
- Data on the municipal origin of complaints are fairly consistent over time, indicating that the majority of complaints arise in the larger urban centres with only a few incidents occurring in smaller rural communities. This seems to be a normative finding.
- Data on complaint dispositions indicate that few complaints are dismissed as out of scope. This is most likely due to effective intake procedures that act to weed out these types of complaints early in the process.
- Complaints dismissed as frivolous or vexatious show a slight increase over time. Experience suggests that this is related to an increase in individual complainants who suffer from mental and emotional disorders. These persons appear to go off their medication from time to time, and while in conditions of emotional distress get into trouble and end up in police custody, resulting in complaints being filed with our agency.

Another factor affecting this finding is an increase in youth street-gang members, outlaw bikers, and other career criminals who sometimes file complaints with a misguided view to putting some heat back on the police.

- Complaints dismissed as unsupported by the evidence rose from 1992 to 1994 but seem to be levelling off in 1995. This statistic is most likely affected by our increasing knowledge and familiarity with the amended legislation and procedures.
- Our data indicate that the number of abandoned complainants have been *decreasing* steadily since 1992. This finding is a little surprising, given that it is taking our office longer to complete investigations.

Two factors that could be affecting this variable are effective intake procedures that act to weed out marginal complaints, and possible improvements in the quality of our investigations.

- Few complaints were resolved informally in 1995. However, this figure has been up and down over the past years and I cannot reliably explain the reasons for that. I wish I could say that we will accomplish more of these informal resolutions, but realistically I can only promise that we will continue to make this option available to the parties involved. So much in the area of informal resolution depends on the willingness of the parties to get together in a spirit of cooperation and that is not always easy to achieve in these situations.
- Complaints referred to a hearing before a Provincial Court judge remain very low. Factors affecting this variable are the sufficiency of evidence and the willingness of complainants to proceed to a public hearing.

Three cases went to a hearing in 1995. One was the Daniels shooting that occurred in Brandon in 1990. The respondent officer was charged with using excessive or unnecessary force and failure to use discretion or restraint in the use and care of a firearm. Mr. Daniels was wounded in this incident but not killed.

Judge Rusen, after a lengthy hearing, concluded that the respondent officer had committed the disciplinary defaults as charged and ordered a penalty of letter of reprimand on each infraction.

The other two complaints referred to hearing occurred in 1994 and involved allegations that the officer used oppressive or abusive language and conduct and was discourteous or uncivil while dealing with the complainants.

In one of these cases Judge Cohen was able to effect an informal resolution between the parties. The hearing was subsequently suspended and the complaint was closed as resolved informally.

The second case was also heard by Judge Cohen, who after hearing evidence from both parties determined that the respondent officer had not committed the alleged misconduct and so dismissed the applicant's complaint.

- Instances where respondent officers admit to a disciplinary default remain very low as well. Factors affecting this statistic are the sufficiency of evidence supporting the allegation and the officers' willingness to admit wrongdoing.

In the one case where an officer did admit to a disciplinary default in 1995, the misconduct admitted to was the use of oppressive conduct and rude and discourteous behavior.

A penalty of a written reprimand and forfeiture of one day weekly leave was assigned by the Commissioner after reviewing the officer's service record and discussing the incident with his Chief of Police.



# Conclusion

Readers will no doubt be aware that this and the 1994 and 1996 Annual Reports are all being completed at the same time, summer 1997. As a result, my conclusions over that three-year period are somewhat dated but not of less validity or consequence. Summary conclusions will be contained in the 1996 annual report

LERA's jurisdiction encompasses approximately 1,300 peace officers, policing over 700,000 people in 11 municipalities across the province. This represents a significant majority of the province's population, and means that thousands of interactions take place between the public and police in Manitoba in any given year.

There is a growing concern about the length of time it is taking my office to complete investigations and report our findings. This problem is directly related to increased numbers of complaints coming to our office, and the inadequate resources available to my office, reducing my ability to respond in more effective or timely manner.

Complaints alleging misuse of pepper spray have dropped off a little this year; however, allegations of misuse of handcuffs and excessive use of force are becoming more numerous. There is also a growing concern about the absence of charges in the most serious cases of excessive force referred to the Crown for investigation.

To the best of my knowledge there has never been a charge laid by the Crown as a result of a referral from LERA in the nine years that LERA has been in existence. Certainly, none have been laid in the four years I have been Commissioner. This has raised many questions from complainants who have filed these complaints and causes me to question whether or not the system is skewed in some manner to unduly prohibit or restrict the laying of charges in these cases.

Notwithstanding the organizational difficulties described above, I remain confident that relations between the public and the various municipal police services in Manitoba continues at a very high level of service and performance by the police, combined with a high level of acceptance and satisfaction by the public. Not all of the calls and letters received in my office are complaints, we also receive calls and letters supporting police services across the province.

While this is a good record, and deservedly so, it is important to realize that individual and systemic problems do exist, and troubling incidents do occur from time to time. The issues of an increasing number of complaints alleging assault or excessive use of force resulting in injury, and the evidence of a growing misuse of pepper spray are two such examples.

Without continued attention by everyone involved, problems that are present and situations that occur could, and most likely would, escalate. The prompt, effective, and efficient handling of public complaints alleging police misconduct is clearly a situation where an ounce of prevention is well worth its pound of cure.

# 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, nonpolice 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 or budget 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, 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 whenever they could. Their always-cheerful assistance and support is recognized and much appreciated.

Along with their other duties in Law Enforcement Services, Gerald Ferguson and Ian Macdonald conducted many investigations for LERA . Mr. Ferguson assumed the senior investigator's role after Del Hanson retired. Mr. Macdonald resigned from government service this year and returned to private-sector employment. I would like to take this opportunity to thank him for the work he did on behalf of LERA. and wish him every success and happiness in his new endeavors. Without their capable assistance in conducting many investigations, my job as Commissioner would have been impossible.

Neville Shende Q.C., Deputy Director of 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 the Public Safety Branch, 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.

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