
Manitoba 

**Annual Report
1992**

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



Includes 10% post-consumer waste

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L.E.R.A.'s Role and Mission

Max Yalden, Chief Commissioner of the Canadian Human Rights Commission, recently said that "Policing is first and foremost a service to the public; the more it is at odds with the composition and values of that public, the less well it works."

Police officers generally work hard to uphold the law, protect life and property, and maintain good relations with the public they serve. For the most part, police carry out their duties without public complaint, often receiving praise and support from the public for the work they do.

From time to time, however, a citizen may feel unjustly treated by the police. When a complaint alleging police misconduct does occur, procedures established under The Law Enforcement Review Act (L.E.R.A.) are followed to register, investigate and resolve the complaint.

When the evidence supports the complaint, L.E.R.A.'s first responsibility is to try and resolve the complaint informally. If it is not possible to resolve a complaint in an informal manner, the Commissioner must refer the matter to a provincial judge for a hearing.

If the evidence indicates that the complaint is frivolous or vexatious, the Commissioner has a responsibility to dismiss the complaint. Where the evidence does not support the complaint, the Commissioner may dismiss the complaint as unsupported by the evidence. Complainants have a right to appeal these decisions by the Commissioner to a provincial court judge.

1992 - A Year of Change

1992 was a transition year for L.E.R.A. Procedures for handling public complaints against police were significantly revised in Manitoba during this year. The Manitoba Police Commission and L.E.R.A. Board were dissolved, The Law Enforcement Review Act was amended, and changes were made to L.E.R.A. as an operating agency.

One of the most significant changes involved dissolving the L.E.R.A. Board and giving the Commissioner more direct responsibility for resolving public complaints. Decisions made by the Commissioner were made appealable directly to a provincial court judge. Judicial decisions on appeals were made final.

If the Commissioner was unable to resolve a complaint, but felt that there was sufficient evidence supporting the complaint to hold a public hearing, then these hearings would be set down before a

provincial judge sitting as a "persona designata." This is basically a one-person tribunal adjudicating the case on its merits.

While the data from 1992 is preliminary, it does suggest that these changes are meeting their objectives. The new procedures for handling public complaints seem to be meeting the public's needs and expectations. The police community seems to be responding favourably to the changes. There has been no significant change in the volume or nature of public complaints as a result of these amendments. This preliminary review suggests that the new procedures are working effectively.

The New L.E.R.A. Processes

What is L.E.R.A.?

The Law Enforcement Review Agency (L.E.R.A.) is a non-police agency dealing with public complaints of police misconduct. L.E.R.A., established in 1985, is mandated under The Law Enforcement Review Act to investigate public complaints of police misconduct. Allegations of an abuse of authority or disciplinary default are defined by Section 29 of the Act.

L.E.R.A. does not investigate criminal matters. Complaints involving allegations of a criminal nature are referred to the Attorney General for investigation.

L.E.R.A. is staffed by a full-time Commissioner supported by investigative officers and administrative and clerical staff, in the Law Enforcement Services branch of the Manitoba Department of Justice.

To whom does L.E.R.A. apply?

The Act applies to any police officer, employed as a member of a municipal police force in Manitoba. L.E.R.A. cannot accept complaints against members of the R.C.M.P. If a citizen has a complaint against the R.C.M.P., he or she should contact the officer in charge of the local R.C.M.P. detachment, the Commanding Officer for Manitoba, or the R.C.M.P. Public Complaints Commission.

Who can make a complaint to L.E.R.A.?

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

Third party complaints may be made on behalf of other persons affected by the alleged misconduct. The Commissioner must, however, notify the affected person and obtain their consent to proceed with 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 or action. If complainants need help preparing a complaint or making a statement, L.E.R.A. staff or the police will assist them.

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

Are there any time limits?

Complaints must be submitted within 30 days of the incident.

The Commissioner has some discretion to extend this time limit if the complainant has not had a reasonable opportunity to file a complaint due to illness, injury or other reasonable cause.

In order to avoid conflict with ongoing criminal investigations or court proceedings, the Commissioner may also extend the time limit when criminal charges are involved.

How is a complaint investigated?

L.E.R.A. investigators take statements, obtain official police, medical and other reports, interview witnesses and conduct all necessary inquiries and investigations.

The Commissioner keeps complainants informed during the course of the investigation. The Commissioner shares all relevant information with complainants and discusses any findings with them prior to making a final determination on their complaint. Complainants are free to contact the Commissioner's office during the course of the investigation to inquire about the status of their complaint.

Legal Representation

Complainants do not require legal representation to file a complaint with L.E.R.A.; however, parties to the complaint are entitled to be represented by counsel at any time during the process. If complainants choose to be represented, they must provide and pay for those services themselves.

Complaint Resolution

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

Informal Resolution:

Whenever possible, the Commissioner will attempt to resolve complaints through an informal process. Both the complainant and the respondent officer(s) 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 further appeal or action.

Admission of Disciplinary Default:

When a respondent officer admits having committed the misconduct, the Commissioner and the respondent's Chief of Police shall determine and impose penalty for the disciplinary default.

Referral to a Judge for Hearing:

When a complaint cannot be resolved through an informal process or admission of default by the respondent officer(s), and if the Commissioner does not decline to take further action, the Commissioner shall refer the complaint to a provincial judge for resolution 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 will be heard by a provincial judge whose decision on the matter is final and not subject to further appeal or review.

L.E.R.A. as an Operating Agency

L.E.R.A. now operates out of the Law Enforcement Services branch of the Department of Justice.

Mr. Des DePourcq was Commissioner until near the end of 1992. He was replaced on an interim basis by Mr. Norman Ralph.

L.E.R.A. investigators were Mr. Del Hanson, Mr. Gerry Ferguson and Mr. Ian Macdonald.

Administrative and clerical support was provided by Ms Michèle Dupuis, Ms Judie Roberts and Ms Dixie Walters.

Mr. Neville D. Shende, Q.C., Deputy Director of Civil Legal Services, serves as legal counsel for the agency.

Mr. Les Kee, Director of Special Prosecutions and Programs, and Mr. R. P. (Bob) Chamberlain, Director of Law Enforcement Services, provide management and other expert support.

Acknowledgements

While I am preparing this report as the interim Commissioner, credit for the successes of the year should go to Mr. Des DePourcq and the staff named above as they did the real work. Special credit is due them as this was a transition year full of many significant changes. Congratulations on a job well done by all.

L.E.R.A. would not function without the cooperation and assistance of the Police Chiefs and members of the eleven municipal police forces operating within the province. Their recognition, acceptance and support of the public's right to have their grievances heard by a neutral, non-police agency such as L.E.R.A. makes this process possible.

Legal counsel representing members of the various police associations have been very open and cooperative in their dealings with L.E.R.A. This openness and cooperation is recognized and acknowledged. Without it our job would be much more complicated and difficult.

We should never overlook the acceptance and willingness of members of the public who come forward to have their grievances dealt with in such an open forum. Dealing with conflict in this manner is not always an easy thing to do. The people who use this service should be recognized for their fortitude and courage in doing so.

Special recognition should be afforded to those members of the public, and the respondent officers who are able to resolve their differences in an informal manner under this process.

L.E.R.A. is an open forum, the successful operation of which depends on the willingness, and cooperation of members of the public, police, and other interested parties. Without this support L.E.R.A. could not, would not and should not function.

1992 Statistical Report - Data Tables

Table 1
Annual Summaries

TOTALS FOR THE YEAR	1992	1991	1990
Number of complaints received	167	189	197
Non-jurisdiction, not within scope, time expired	90	120	111
Complaints investigated in current year	77	69	86
Files carried forward from previous years	31	40	43
Files still open at year end (December 31, 1992)	40	31	40

Table 2
Files Closed by Disposition

	1992	1991	1990
Abandoned by complainant	28	22	29
Admission by respondent officer	1	--	--
Informal resolution	8	13	3
Referred to a L.E.R.A. Board hearing on the merits *	--	10	6
Totals	37	45	38

* 1992 amendments removed the L.E.R.A. Board - unresolved complaints are now referred to a provincial judge for a hearing.

Note: 1992 amendments to the Act allow the Commissioner to dismiss complaints that are determined to be frivolous or vexatious, or unsupported by the evidence. This power was not available under earlier legislation.

Table 3
Origin by Police Department

	1992	1991	1990
Altona Police Department	--	--	--
Brandon Police Service	5	2	6
Cornwallis Police Department	--	--	--
East St. Paul Police Department	--	--	--
Morden Police Department	--	--	--
Rivers Police Department	--	--	--
Ste. Anne Police Department	--	--	--
St. Clements Municipal Police	--	--	--
Victoria Beach Police Department	--	--	--
Winkler Police Department	--	--	--
Winnipeg Police Department	72	67	80
Totals	77	69	86

Table 4
Types of Allegations

	1992
Abuse of authority	9
Using oppressive or abusive conduct or language	32
Using unnecessary violence or excessive force	39
Being discourteous or uncivil	16
Discrimination	6
Arrest without reasonable or probable grounds	9
Failing to provide assistance	1
Making a false statement	--
Damaging property or failing to report damage	1
Failing to use restraint in the use and care of firearms	1
Violating the privacy of any person within the meaning of The Privacy Act	--
Improperly disclosing information acquired as a member of a police department	2
Contravening this act or any regulation under this act	--
Totals	116

Note: Complaints may contain allegations of more than one type of misconduct, therefore, these numbers do not directly equate to the number of complaints investigated.

Table 5
Legal Involvement of Complainant

	1992	1991	1990
No charges against complainant	35	28	32
Traffic violations against complainant	7	13	22
Property offences against complainant	8	--	6
Intoxicated Persons Detention Act	4	5	--
Causing disturbance	3	4	--
Assaulting peace officer/resist arrest	3	5	7
Impaired driving	2	3	2
Offences against another person	5	2	--
Other	10	9	17
Totals	77	69	86

Table 6
Number of Months to Resolution

	1992	1991	1990
3 months and under	23	21	24
4 to 8 months	12	22	37
9 to 12 months	2	15	10
over 12 months *	--	17	10

* The number of complaints taking 12 months and over to resolve in 1992 will be reflected in the 1993 Annual Report.

Data Analysis

- There are 11 municipal police forces operating in Manitoba which fall under the jurisdiction of L.E.R.A. These 11 police departments employ a complement of about 1,200 police officers. They police a population of approximately 700,000 persons.
- The majority of complaints were resolved at the Commissioner's level without having to be referred to a public hearing.
- Approximately 60% of complaints alleged rude, discourteous or abusive conduct.
- Thirty-three percent of complainants alleged excessive use of force by police.
- Only .05% of complainants alleged any form of discrimination.
- Forty-five percent of complaints involved situations where the complainant did not face charges as a result of the incident being complained about.
- Approximately 30% of complaints were resolved in three months or less, a second 30% were resolved in four to eight months, 15% took nine to 12 months to resolve, and a final 15% took over 12 months to resolve.

Conclusion

The data reported indicates Manitoba does not have a major problem in relation to public complaints of police misconduct. This is contrary to the impression many people have of the relationship between Manitoba's police and the communities they serve. It is gratifying to recognize that this is one societal problem that does not appear to be as serious in Manitoba as it is in other jurisdictions in Canada, and in other nations around the world.

It is, however, important to realize that some of the complaints we deal with are very serious indeed. We have only to reflect on a couple of the more highly publicized incidents that have occurred in the recent past to be aware of this fact.

Without continued diligence and attention by everyone involved, the problems that do exist could easily become more pronounced. The prompt, effective and efficient handling of public complaints of police misconduct is clearly a situation where an ounce of prevention is well worth a pound or more of cure. In this respect, L.E.R.A. seems to be fulfilling its mandate and serving a useful function within the province and the justice system.