

Manitoba 

Annual Report 1993

Office of the Commissioner
Law Enforcement Review Agency





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 1993 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, 1993 to December 31, 1993.

I trust this meets with your approval.

Respectfully submitted,

Rosemary Vodrey
Minister of Justice
Attorney-General



Justice

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The Honourable Rosemary Vodrey
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Attorney General

Dear Madam Minister:

I am pleased to submit my report for the period January 1, 1993 to December 31, 1993 in accordance with Section 45 of The Law Enforcement Review Act.

Respectfully submitted,

Norman Ralph
Commissioner

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

L.E.R.A. is an independent, non-police agency whose role is to accept and investigate public complaints alleging misconduct by on-duty police officers. Investigations are conducted by trained investigators in an impartial, open and publicly accountable manner.

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

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

L.E.R.A.'s mission is to deliver a judicious and impartial, client oriented service to the public, and to the various 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 engage in alternative conflict resolution processes aimed at restoring and promoting social harmony between the affected parties whenever possible.

1993 - A Year of Transition and Adjustment

During 1993 L.E.R.A. had to adjust to several changes. A new Commissioner was appointed. Recent amendments to the Act added significant new authorities and responsibilities to the Commissioner's role. Adjustments had to be made in moving to a new location and operating within a new branch of the department.

Notwithstanding challenges posed by these changes experience over the past year indicates that the agency is meeting its objectives. Public, and police response continues to be generally favourable.

One area in which we experienced significant difficulty was in the transition between the old and new computer generated data systems. An unfortunate, but entirely accidental loss of computer generated records occurred during the move. This resulted in our having to create a new data system, and having to manually re-enter lost records.

A most unfortunate consequence of these systems problems has been some deviation in the reported data for 1992. I apologize for any errors that may have occurred in our data as a result of these problems. I also want to assure our readers that these data problems have been corrected, and that those which did occur have not affected the overall trends, or general conclusions contained in this or previous annual reports.

How The L.E.R.A. Process Functions

The Law Enforcement Review Agency (L.E.R.A.) is an independent non-police agency dealing with public complaints alleging police misconduct. L.E.R.A., established in 1985, is mandated by The Law Enforcement Review Act to accept and investigate public complaints alleging police misconduct by on duty peace officers. The scope and types of misconduct that can be investigated by L.E.R.A. are defined in Section 29 of the Act.

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

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

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

The Act applies to any peace officer employed as a member of a municipal police force, or any person otherwise empowered by regulation to act as a peace officer within a Law Enforcement Body in Manitoba, except members of the R.C.M.P.

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

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

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, L.E.R.A. staff or members of the local police service 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 police agencies are forwarded to the L.E.R.A. Commissioner for investigation.

Are there any time limits?

The Act requires that complaints be submitted within 30 days of the incident. However, the Commissioner has some discretion to 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?

L.E.R.A. 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 prior to making a final determination on their complaint.

Legal Representation

Complainants and respondents do not require legal representation when dealing with L.E.R.A. 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 contract.

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 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 a 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 will be heard by a provincial judge whose decision on the matter is final.

1993 Statistical Report - Data Tables

Table 1
Public Complaints

	1993	1992
Total Complaints Received	178	188
Resolved at Intake, or After Preliminary Investigation	97 (55%)	93(49%)
Requiring Full Investigation	81 (45%)	95(51%)

Table 2
Investigations

	1993	1992
Total Investigations	132	122
Investigations Completed Files Closed	93 (70%)	64(52%)
Ongoing Investigations - Carried Over to Next Year	39(30%)	58(48%)

Table 3
Complainant Demographics
(Based on complaints requiring full investigation)

	1993 (n=81)	1992 (n=95)
Sex		
Male	55 (68%)	73 (77%)
Female	26 (32%)	22 (23%)
Age		
Over 50	5 (6%)	7 (7%)
40 - 50	18 (22%)	17 (18%)
30 - 40	28 (35%)	25 (27%)
18 - 30	26 (32%)	38 (40%)
Youths Under 18	4 (5%)	8 (8%)

Table 4
Legal Involvement of Complainants

	1993 (n=81)	1992 (n=95)
No Charges Against Complainant	38 (47%)	44 (46%)
Traffic Offences	8 (10%)	8 (8%)
Property Offences	5 (6%)	9 (10%)
Intoxicated Persons Detention	5 (6%)	5 (5%)
Cause Disturbance	0 (0%)	3 (3%)
Assault Police Officer/Resist Arrest	3 (4%)	3 (3%)
Impaired Driving	4 (5%)	3 (3%)
Offences Against Another Person	5 (6%)	7 (7%)
Domestic Disputes	2 (2%)	2 (2%)
Other	11 (14%)	11 (12%)

Table 5
Location of Incident

	1993 (n=81)	1992 (n=95)
Private Residence	31 (38%)	38 (40%)
Street	24 (30%)	29 (31%)
Public Building/Place	19 (23%)	24 (25%)
Police Station	7 (9%)	4 (4%)

Table 6
Police Service

	1993 (n=81)	1992 (n=95)
Altona	0	0
Brandon	10	6
RM Cornwallis	1	0
East St. Paul	0	0
Morden	1	0
Rivers	0	0
St. Anne	1	0
RM St. Clement	0	0
Victoria Beach	0	0
Winkler	0	0
Winnipeg	68	89

Table 7
Complainants' Allegations

	1993	1992
Abuse of authority	19	16
Arrest without reasonable or probable grounds	6	14
Using unnecessary or excessive violence of force	29	43
Using oppressive or abusive conduct or language	19	36
Being discourteous or uncivil	19	24
Seeking improper personal advantage	0	1
Serving civil documents without proper authorization	0	0
Discrimination (age, race, sex, all types)	4	6
Making false statement(s)	1	0
Improperly disclosing information	2	4
Failing to exercise care or restraint in use of firearm	2	1
Damaging property or failing to report damage	2	1
Failing to provide assistance to person(s) in danger	5	1
Violating persons privacy (Under The Privacy Act)	1	0
Contravening The Law Enforcement Review Act	0	0

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

Table 8
Disposition of Complaints

Investigations Completed/Files Closed

	1993 (n=94)	1992 (n=64)
Dismissed by Commissioner as Outside Scope of Act	2	0
Dismissed by Commissioner as Frivolous or Vexatious	8	5
Dismissed by Commissioner as not Supported by Evidence	19	0
Abandoned or Withdrawn by Complainant	55	42
Resolved Informally	8	14
Public Hearing Before a Provincial Court Judge	1	2
Admission of Guilt by Respondent Officer	1	1

Table 9
Referrals to Crown

1993 (n=0)

1992 (n=7)

All cases referred to the Crown in 1992 involved allegations of assault by police. No charges were recommended by the Crown in any of these cases due to insufficient evidence, or the unlikelihood of successful prosecution.

The fact that no cases were referred to the Crown in 1993 is most likely a statistical anomaly. However, like many of the variables reviewed in this report, more long term study will be required to allow for more dependable analysis and conclusions.

Table 10
Appeals of Commissioner's Decisions

1993(n=3)

1992(n=2)

The court upheld the Commissioner's decision in all 1992 and 1993 appeals.

Data Analysis

- Please note that data analysis in this year's report has been restricted to 1992 and 1993 data. It was felt that because of the significant amendments made to the Act in late 1992, analysis of pre and post 1992 data would produce invalid comparisons in many instances.
- The number of complaints received over the past two years appears to be relatively stable.
- The differences in the number of investigations completed, files closed, and files carried forward between 1992 and 1993 are primarily due to the late 1992 amendments made to the Act and the fact that there was a period of vacancy in the Commissioner's office when the previous Commissioner retired in late 1992.
- The number of males filing complaints remains stable at about seventy percent of complainants. This is consistent with most other criminological data which indicate that criminal activity, and therefore by association, police/public interaction is a predominantly male problem.
- Young adults 18-40 years of age represent the majority of L.E.R.A. complainants. Criminological data indicates that older persons and youths consistently have less interaction with police, this is also reflected in L.E.R.A. data.
- It is interesting to note that a significant proportion of complainants were not charged with any offence. This suggests that quite often it is something other than being charged with an offence that causes the public to complain about police conduct.

Our data indicates 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 officer's attitude towards the complainant, and
- (3) the amount of force used by police during the interaction.

- Another concern that is often raised by complainants is the reasonableness of their arrest by police. It is however, rare for evidence from our investigations to support this type of allegation. The vast majority of arrests have proven to be legal, and were based on reasonable and probable grounds.

In most complaints of this type, the public either does not realize the amount of discretion police have in this area, or they simply do not agree with the manner in which that discretion was exercised.

- One *very* positive indicator is the low number of complaints that allege any type of discrimination. This suggests that Manitoba's municipal police services are responding in a favourable manner to an increasingly diverse society.

It should however be noted that while few in number, allegations of discrimination are most often associated with race.

- A large number of dispositions alter investigation involve complaints that are either abandoned or withdrawn by complainants. Some reasons for this are: (i) During the course of an investigation it often becomes apparent that there is insufficient evidence supporting the complaint resulting in complainants abandoning or withdrawing their complaints. (ii) Complaints can sometimes take a long time to resolve, often because of delays involving criminal charges. As time passes and the more serious criminal issues are resolved the complaint becomes less important and people tend to drop them. (iii) Some complainants are transient resulting in them moving without contacting L.E.R.A., or without leaving forwarding addresses.
- The reason that no complaints were disposed of as lacking sufficient evidence in 1992 results from the fact that this power was only granted to the Commissioner when the Act was amended in late 1992, and consequently had no impact on that year's caseload.
- With most complaints being resolved by other means, referrals to public hearings and admissions of guilt by respondent officers do not occur very often.

Only one complaint was referred to a hearing in 1993 however, the results of that hearing were not known at year's end. Those results will be reported in 1994.

One respondent officer admitted having improperly disclosed information acquired as a member of a police service. Penalty of three days loss of pay and a written reprimand was imposed for this offence.

- Appeals of the Commissioner's decisions are heard by a provincial court judge.

Data on appeals are gratifying to date. The number of appeals are small, and the Commissioner's decisions have been upheld in all cases to date. However, like many of the variables reviewed in this report this will require more long term study to allow for more dependable analysis and conclusions.

Conclusion

In preparing the 1993 report I am much more familiar with the data, the process, and the individuals involved. Based on my experience and analysis of the 1993 data, I remain confident that the state of relations between the public, and the various municipal police services in Manitoba continues to operate at a very high level of performance and satisfaction.

L.E.R.A.'s jurisdiction encompasses approximately 1200 peace officers, policing over 700,000 people. That is a significant majority of the province's population, and means that literally thousands of interactions take place between the public and police in Manitoba in any given year.

Given the complexity and difficulty of many of these interactions, I feel that the public complaints record outlined in this report demonstrates a very good if not excellent performance record by the police services involved.

Notwithstanding this good record it is important to realize that problems do exist, and that without continued attention by everyone involved, those problems 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 a pound of cure.

Acknowledgements

L.E.R.A. 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 L.E.R.A. make this process possible.

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

While the role of Commissioner can often be difficult and challenging, it would be impossible without the excellent assistance and support of staff in the Law Enforcement Services Branch, and many others involved in this process.

Along with her other duties in Law Enforcement Services, Ms Judie Roberts provided principal clerical support for L.E.R.A. Her tireless and seemingly endless efforts are greatly appreciated.

Ms Michele Dupuis, and Ms Dixie Walters provided backup clerical, and administrative support. Ms Jodie Cahoon provided systems and other technical support. Their assistance and support are much appreciated.

Along with their other duties in Law Enforcement Services, Mr. Gerald Ferguson, and Mr. Ian Macdonald conducted many investigations for L.E.R.A. Mr. Ferguson assumed the senior investigator's role after Mr. Del Hanson retired to enjoy the good life. Without their capable assistance in conducting these investigations my job as Commissioner would be impossible.

Mr. Neville Shende Q.C., Deputy Director of Civil Legal Services provided excellent legal counsel and advice for the agency.

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