

Manitoba 

Annual Report 1997

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



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 1997 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, 1997 to December 31, 1997.

I trust this meets with your approval.

Respectfully submitted,

Original signed by

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



Manitoba Justice

Public Safety Division

Law Enforcement Review Agency



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

Dear Minister:

I am pleased to submit my report for the period January 1, 1997 to December 31, 1997 in accordance with Section 45 of **The Law Enforcement Review Act**.

Yours sincerely,

Original signed by

George V. Wright
Acting Commissioner

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LERA'S MISSION STATEMENT

The Law Enforcement Review Agency (LERA's) mission is to deliver a judicious, timely, impartial, client-oriented service to the public and to the police services and peace officers within its jurisdiction.

LERA'S ROLE

LERA is an independent, non-police agency whose role is to accept and investigate public complaints alleging abuse of authority by on-duty municipal 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.

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

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 municipal peace officers.

LERA does not investigate criminal matters. Complaints involving allegations of criminal misconduct by municipal 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 municipal 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.

1997 STATISTICAL REPORT - DATA TABLES

Table 1-Public Complaints	1997	1996	1995	1994	1993
Complaints Received	303	291	228	205	178
Resolved at Intake/After Preliminary Investigation	169 (56%)	164 (56%)	123 (54%)	123 (60%)	97 (55%)
Requiring Full Investigation	134 (44%)	127 (44%)	105 (46%)	82 (40%)	81 (45%)

Increase in Complaints

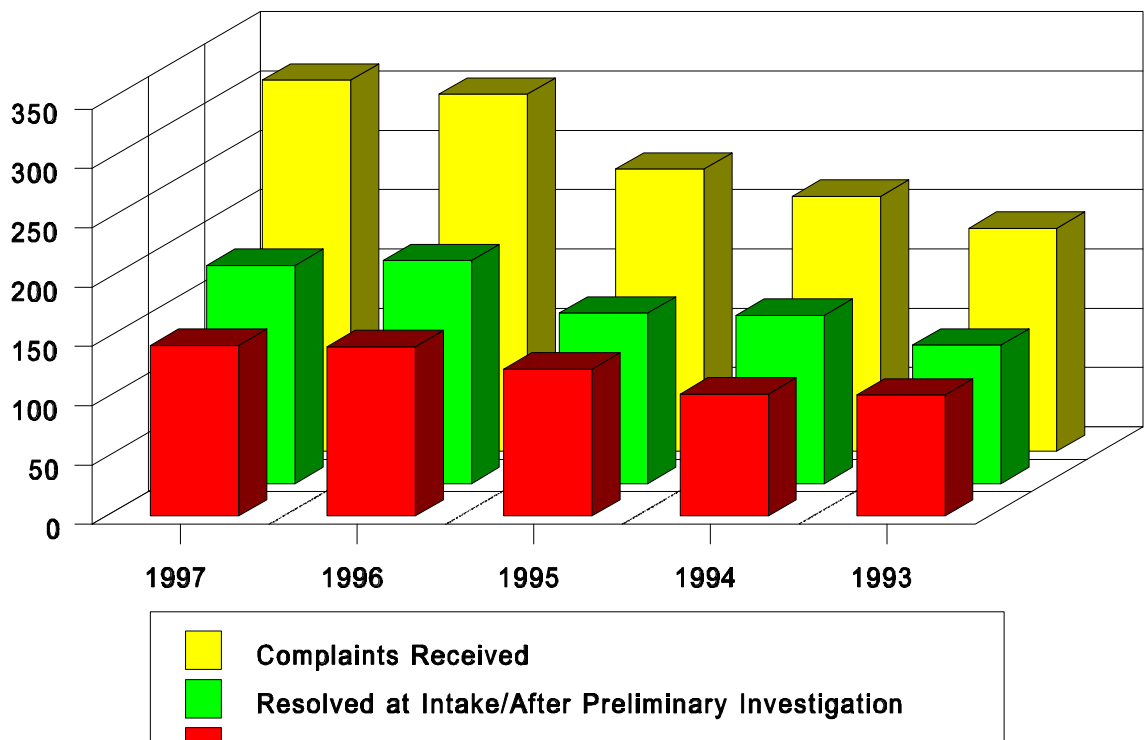


Table 2-Investigations Conducted	1997	1996	1995	1994	1993
Total Investigations	185	216	164	125	132
Investigations Completed-Files Closed	59 (31%)	102 (47%)	70 (43%)	78 (62%)	93 (70%)
Ongoing Investigations Carried Over	126(68%)	114 (53%)	94 (57%)	47 (38%)	39 (30%)

Investigations Conducted

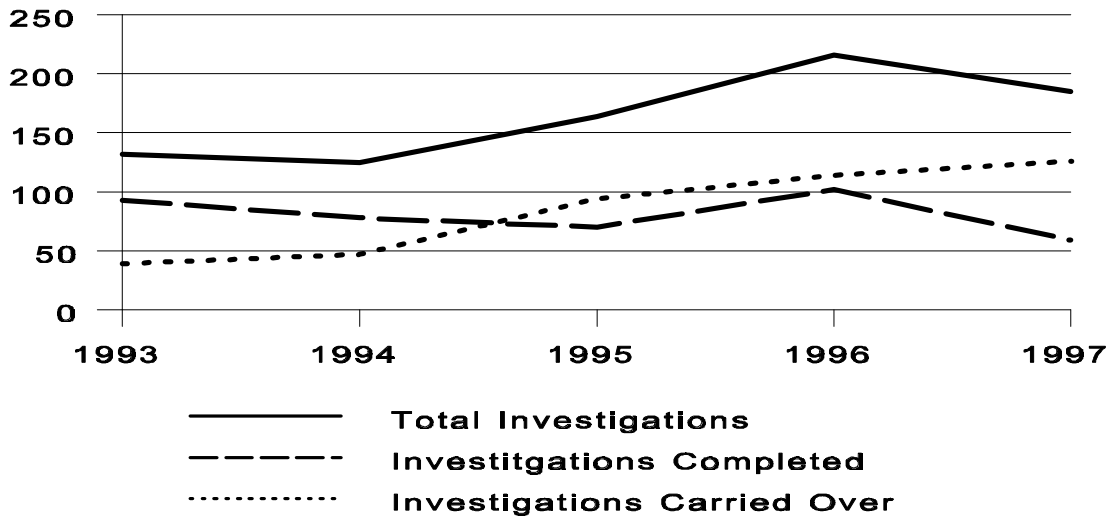


Table 3-Length of Time to Complete Investigations

	1997 (n= 59)	1996 (n= 102)	1995 (n= 70)	1994 (n= 79)
1 - 3 Months	6 (10%)	5 (5%)	3 (4%)	14 (18%)
4 - 7 Months	4 (7%)	14 (14%)	17 (25%)	27 (35%)
8 - 12 Months	14 (24%)	36 (35%)	26 (37%)	20 (26%)
13 - 18 Months	26 (44%)	37 (36%)	18 (26%)	7 (9%)
19 - 23 Months	6 (10%)	8 (8%)	5 (7%)	6 (7%)
24 + Months	3 (5%)	2 (2%)	1 (1%)	4 (5%)
AVERAGE:	14 Months	12 Months	11 Months	9 Months

Average Time to Complete Investigations

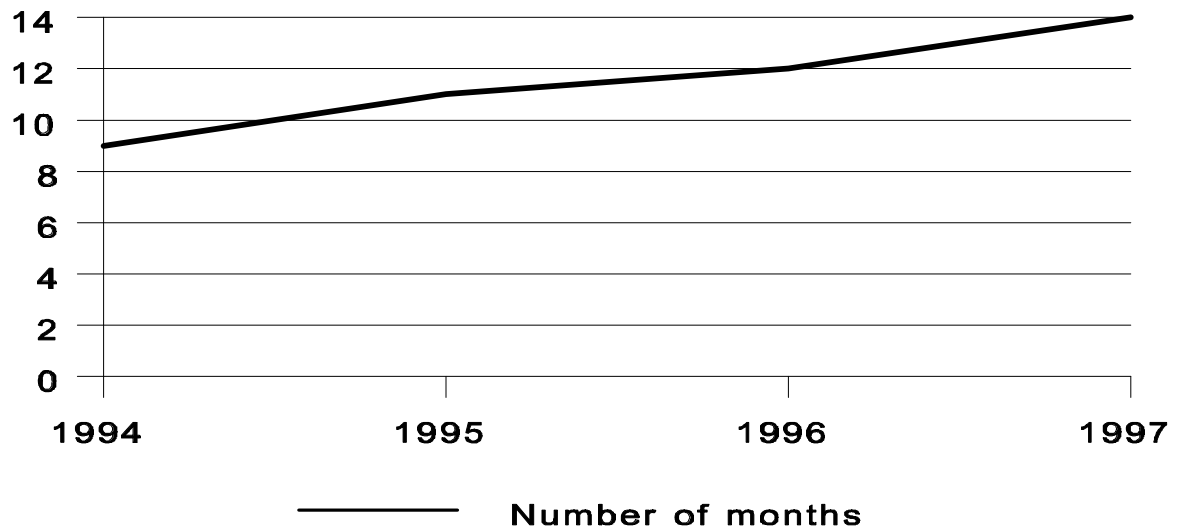


Table 4- Complainant Demographics	1997 (n= 134)	1996 (n= 127)	1995 (n= 105)	1994 (n= 82)	1993 (n= 81)
Sex					
Male	104 (78%)	99 (78%)	77 (73%)	53 (65%)	55 (68%)
Female	30 (22%)	28 (22%)	28 (27%)	29 (35%)	26 (32%)
Age					
Over 50	13 (10%)	11 (9%)	9 (9%)	8 (10%)	5 (6%)
40 - 49	21 (15%)	15 (12%)	13 (12%)	17 (21%)	18 (22%)
30 - 39	33 (25%)	35 (27%)	26 (25%)	17 (21%)	28 (35%)
18 - 29	35 (26%)	44 (35%)	32 (31%)	25 (30%)	26 (32%)
Youths under 18	13 (10%)	10 (8%)	11 (10%)	2 (2%)	4 (5%)
Birth dates N/A	19 (14%)	12 (9%)	14 (14%)	13 (16%)	

Table 5-Legal Involvement of Complainants	1997 (n= 134)	1996 (n= 127)	1995 (n= 105)	1994 (n= 82)	1993 (n= 81)
No Charges	44 (33%)	46 (36%)	42 (40%)	35 (43%)	38 (47%)
Traffic Offences	16 (12%)	16 (13%)	13 (12%)	10 (12%)	8 (10%)
Property Offences	10 (7%)	12 (9%)	11 (10%)	10 (12%)	5 (6%)
Intoxicated Persons Detention	10 (7%)	13 (10%)	12 (11%)	2 (2%)	5 (6%)
Cause Disturbance	5 (4%)	4 (3%)	2 (2%)	2 (2%)	0 (0%)
Assault Police Officer/Resist Arrest	7 (5%)	5 (4%)	2 (2%)	0 (0%)	3 (4%)
Impaired Driving	9 (7%)	4 (3%)	5 (5%)	2 (2%)	4 (5%)
Offences Against Another Person	8 (6%)	10 (8%)	6 (6%)	4 (5%)	5 (6%)
Domestic Disputes	7 (5%)	7 (6%)	3 (3%)	6 (8%)	2 (2%)
Other	18 (14%)	10 (8%)	9 (9%)	11 (14%)	11 (14%)

Table 6- Complainant s Allegations	1997	1996	1995	1994	1993
Abuse of authority	16	5	14	9	1
Arrest without reasonable or probable grounds	7	4	6	4	1
Using unnecessary or excessive force	63	70	45	37	2
Using oppressive or abusive conduct or language	52	94	51	38	1
Being discourteous or uncivil	34	45	35	30	1
Seeking improper personal advantage	0	4	0	1	0
Serving civil documents without proper authorization	0	0	0	0	0
Discrimination (age, race, sex, all types)	5	2	5	4	0
Making false statement(s)	1	3	4	3	0
Improperly disclosing information	4	0	2	3	0
Failing to exercise care or restraint in use of firearm	2	3	0	0	0
Damaging property or failing to report damage	2	4	3	4	0
Failing to provide assistance to person(s) in danger	2	8	8	6	0
Violating persons privacy (under The Privacy Act)	0	0	0	1	0
Contravening The Law Enforcement Review Act	0	0	0	0	0

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

Table 7 - Incidents Alleging Misuse of Pepper Spray			
1997 (n= 5)	1996 (n= 13)	1995 (n= 13)	1994 (n= 14)
4% of 134 Complaints Investigated	10% of 126 Complaints Investigated	12% of 105 Complaints Investigated	17% of 82 Complaints Investigated
Police Services	Police Service	Police Service	Police Service
Winnipeg = 4 Brandon = 1	Winnipeg= 13	Winnipeg= 12 Altona= 1	Winnipeg= 12 Brandon= 1 Rivers= 1

Table 8-Incidents Alleging Misuse of Handcuffs		
1997 (n= 9)	1996 (n= 12)	1995 (n= 10)
7% of 134 Complaints Investigated	10% of 126 Complaints Investigated	10% of 105 Complaints Investigated
Police Service	Police Service	Police Service
Winnipeg= 7 Brandon= 2	Winnipeg= 10 Brandon= 2	Winnipeg= 8 Brandon= 2

Table 9-Incidents Alleging Injuries from Use of Force			
1997 (n= 40)	1996 (n= 67)	1995 (n= 44)	1994 (n= 23)
30% of 134 Complaints Investigated	53% of 126 Complaints Investigated	42% of 105 Complaints Investigated	28% of 82 Complaints Investigated
Police Services	Police Service	Police Service	Police Service
Winnipeg= 36	Winnipeg= 64	Winnipeg= 38 Brandon= 5	Winnipeg= 21 Brandon= 1

Table 9-Incidents Alleging Injuries from Use of Force

Brandon= 4	Brandon= 3	Altona= 1	Rivers= 1
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Table 10-Location of Incident	1997 (n= 134)	1996 (n= 127)	1995 (n= 105)	1994 (n= 82)	1993 (n= 81)
Private Residence	37 (28%)	44 (35%)	24 (23%)	29 (35%)	31 (38%)
Street	61 (46%)	44 (35%)	44 (42%)	29 (35%)	24 (30%)
Public Building/Place	18 (13%)	8 (6%)	16 (15%)	10 (12%)	19 (23%)
Police Station	12 (9%)	26 (20%)	13 (12%)	7 (9%)	7 (9%)
Other	6 (4%)	5 (4%)	8 (8%)	7 (9%)	N/A

Location of Incident

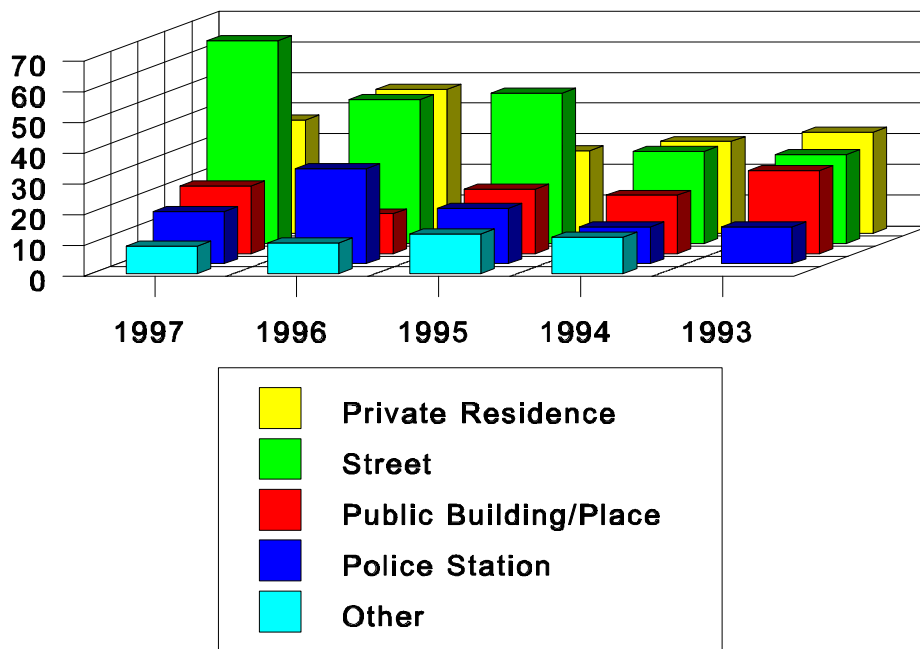


Table 11- Police Service	1997 (n= 134)	1996 (n= 127)	1995 (n= 105)	1994 (n= 82)	1993 (n= 81)
Altona	0 (0%)	0 (0%)	2 (2%)	0 (0%)	0 (0%)

Table 11- Police Service	1997 (n= 134)	1996 (n= 127)	1995 (n= 105)	1994 (n= 82)	1993 (n= 81)
Brandon	17 (13%)	14 (11%)	16 (15%)	14 (17%)	10 (12%)
RM Cornwallis	0 (0%)	0 (0%)	0 (0%)	0 (0%)	1 (1%)
RM East St. Paul	0 (0%)	2 (1.5%)	1 (1%)	0 (0%)	0 (0%)
Morden	0 (0%)	0 (0%)	0 (0%)	0 (0%)	1 (1%)
Rivers	0 (0%)	* 1 (1%)	0 (0%)	1 (1%)	0 (0%)
Ste. Anne	0 (0%)	2 (1.5%)	0 (0%)	0 (0%)	1 (1%)
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	0 (0%)	1 (1%)	0 (0%)	2 (2%)	0 (0%)
Winnipeg	117(87%)	107 (84%)	86 (82%)	64 (79%)	68 (85%)
Other	0 (0%)	0 (0%)	0 (0%)	1 (1%)	0 (0%)

*Amended

Table 12-Disposition of Complaints	1997 (n= 59)	1996 (n= 103)	1995 (n= 70)	1994 (n= 78)	1993 (n= 93)
Dismissed by Commissioner as Outside Scope of Act	1 (2%)	1 (1%)	2 (3%)	0 (0%)	2 (2%)
Dismissed by Commissioner as Frivolous or Vexatious	10(16%)	15 (14%)	11(17%)	11(14%)	8 (9%)
Dismissed by Commissioner as Not Supported by Sufficient Evidence to Justify a Hearing	34(57%)	46 (45%)	24(34%)	30(38%)	19 (20%)
Abandoned or Withdrawn by Complainant	8 (14%)	36 (35%)	24(34%)	34(43%)	54 (57%)
Resolved Informally	1 (2%)	4 (4%)	7(10%)	3 (4%)	8 (9%)
Public Hearing Before a Provincial Court Judge	4 (7%)	1 (1%)	1 (1%)	0 (0%)	1 (1%)
Admission of Guilt by Respondent	1 (2%)	0 (0%)	1 (1%)	0 (0%)	1 (1%)

Officer					
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Table 13-Judicial Reviews of Commissioner s Decisions	1997	1996	1995	1994	1993
	(n= 5)	(n= 3)	(n= 1)	(n= 1)	(n= 3)

Table 14- Referrals to Crown for Criminal Investigation	1997	1996	1995	1994	1993
	(n= 1)	(n= 1)	(n= 4)	(n= 2)	(n= 0)

Data Analysis

The number of public complaints has shown a steady increase over the last several years. Public awareness of LERA may be a factor.

The percentage of complaints resolved at intake or after preliminary investigation remains stable as does the percentage requiring full investigation.

The number of investigations concluded continues to decline. This has resulted in a carry over of files that has steadily increased over the years.

These are all contributing factors that resulted in an average of 14 months to complete an investigation and close a file in 1997. This is contrary to LERA's mission to deliver a judicious, timely, impartial, client-oriented service to the public, and to the police services and peace officers that fall under LERA's jurisdiction. This is also contrary to the principals of natural justice. Legal counsel for respondent police officers has made this an issue in both Provincial Court and Court of Queen's Bench.

LERA as an Operating Agency

LERA is an agency of the Public Safety Branch, Criminal Justice Division, Manitoba Department of Justice.

Mr. Norman Ralph was Commissioner in 1997.

Mr. Neville D. Shende, Q.C., Deputy Director of Civil Legal Services acted as legal counsel.

Mr. Wyman Sangster, Director of Public Safety provided administrative support.

Mr. Ron Forgeron and Mr. George Wright, both members of Law Enforcement Services assisted LERA as investigators on a casual basis.

Ms Judie Roberts and Ms Michele Dupuis, both employees of Law Enforcement Services provided administrative and clerical services.

Acknowledgments

I am preparing this report as Acting Commissioner and it is fitting that I acknowledge the many stakeholders involved in the LERA process. Without their continued support and co-operation, LERA could not function.

- < all those directly involved with LERA as an operating agency previously listed
- < the Chiefs of Police and members of Manitoba's municipal police forces
- < legal counsel for both complainants and respondents
- < complainants and respondents who are able to resolve their differences in an informal manner under this process.

Conclusion

A review of annual reports and documentation reveals a history of administrative difficulties since inception of The Law Enforcement Review Act on February 1, 1985. In the early fall of 1997, the Commissioner was advised that KPMG Investigation and Security Inc. had been retained to do a work load review of LERA. This report had not been received at year's end and is expected early in 1998. This is indeed a positive step and will be of assistance in determining the future requirements of LERA.

The Law Enforcement Review Agency is an independent non-police agency mandated to accept and investigate public complaints alleging abuse of authority by on-duty peace officers. Resources are required to ensure that LERA meets its mandate.

George V. Wright
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