

Manitoba  
Office of the Commissioner  
Law Enforcement Review Agency (LERA)

**Annual Report  
2011**





The Honourable Philip S. Lee, C.M., O.M.  
Lieutenant-Governor of Manitoba  
Room 235 Legislative Building  
Winnipeg MB R3C 0V8

MAY IT PLEASE YOUR HONOUR:

It is my pleasure to present the *2011 Annual Report of the Law Enforcement Review Agency*.

This report details the agency's accomplishments and activities for the 12-month period ending December 31, 2011.

Respectfully submitted,

Honourable Andrew Swan



Law Enforcement Review Agency (LERA)  
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The Honourable Andrew Swan  
Minister of Justice  
Attorney General

Dear Minister:

Pursuant to Section 45 of *The Law Enforcement Review Act*, I am pleased to present the Law Enforcement Review Agency's 26<sup>th</sup> annual report for the period of January 1, 2011, to December 31, 2011.

This report provides statistics on the number and nature of complaints received by the Law Enforcement Review Agency as well as a description of the complaint process and the mandate of the agency. For additional information I have included a summary of a variety of cases to demonstrate the process in actual scenarios.

*The Law Enforcement Review Act* strives to:

- promote a high standard of professional conduct among police officers in Manitoba
- guarantee each citizen in Manitoba the opportunity for an independent investigation and review of their complaints against on duty municipal police officers
- provide a mechanism for the resolution of complaints in a manner that is fair both to the complainants and the respondent police officers
- ensure that the conduct of police officers is consistent with the rule of law and the ideals of a democratic and open society

Yours truly,

George V. Wright  
Commissioner

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## **INTRODUCTION**

*The Law Enforcement Review Act* requires the commissioner to submit an annual report on the performance of his duties and functions to the minister and each municipality in the province that has an established police service. The minister must table the report in the Legislature.

### **LERA'S Mission Statement**

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

### **About LERA**

#### **What is LERA?**

LERA is an independent, non-police agency, established in 1985, under *The Law Enforcement Review Act*, to investigate public complaints about police.

LERA deals only with complaints about municipal or local police incidents arising out of the performance of police duties. It does not investigate criminal matters.

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

The act applies to any peace officer employed by a Manitoba municipal or local police service, including police chiefs. It does not apply to members of the RCMP.

Complaints about members of the RCMP should be directed to the Commission for Public Complaints (CPC) against the RCMP, at [www.cpc-cpp.gc.ca](http://www.cpc-cpp.gc.ca) or by calling 1-800-665-6878 (toll free). LERA will forward these complaints to the CPC.

With the introduction of *The Cross Border Policing Act*, *The Law Enforcement Review Act* now applies to the conduct of police officers from other provinces or territories who have been appointed as police officers in Manitoba. Complaints involving police officers from outside of Manitoba's jurisdiction can result in recommendations by a judge, but no penalty can be imposed. The act also applies to the conduct of Manitoba police officers appointed as police officers in other provinces.

#### **What does LERA investigate?**

LERA investigates allegations from the public that municipal or local police officers have committed any of the following actions:



- abusing authority, including:
  - 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 monetary or personal advantage
  - serving or executing documents in a civil process without authorization
  - providing differential treatment without reasonable cause on the basis of any characteristic set out in subsection 9(2) of *The Human Rights Code*
- 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
- failing to help where there is a clear danger to the safety of people or property
- violating the privacy of any person under *The Privacy Act*
- breaching any part of *The Law Enforcement Review Act* that does not already specify a penalty for the violation
- helping, counselling or causing any police officer to commit officer misconduct

### **Who are complainants and respondents?**

A **complainant** is any person who feels wronged by the conduct or actions of a municipal police officer in Manitoba and files a complaint. Complainants may file on their own behalf or on behalf of another person. LERA must have written consent from that person before acting on the complaint.

A **respondent** is any police officer against whom a complaint has been filed by the public.

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

A complaint must be made in writing and signed by the complainant. Date, time, location and other details of the incident are important and must be included. You may ask LERA staff or members of the local police service to help you prepare a complaint.

Written complaints may be sent directly to LERA, or given to a police chief or any member of a municipal or local police service. Police will forward the complaints to LERA.

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

The act requires a written complaint to be made within 30 days of the incident. The commissioner may extend that limit if there are valid reasons for being unable to make the complaint on time.

The commissioner may also extend the 30-day filing limit to avoid conflict with court proceedings or an ongoing criminal investigation involving a complainant.

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

LERA has professional investigators who interview witnesses, take statements and review reports such as official police records and medical reports. LERA investigators make all the inquiries they believe are necessary to uncover relevant evidence.

LERA may be contacted at any time to inquire about the status of a complaint. The commissioner remains open to discussion with all parties before making a final decision.

### **How is a complaint screened?**

After an investigation, the commissioner will screen the complaint to decide if any further action should be taken. The act states the commissioner must do this. The commissioner will take no further action if any one of the following situations arises:

- the alleged conduct does not fall within the scope of misconduct covered by the act
- the complaint is frivolous or vexatious
- the complaint has been abandoned by the complainant
- there is not enough evidence to justify referring the complaint to a provincial judge for a public hearing

If the commissioner decides to close the complaint file and take no further action, the complainant will be notified in writing. The complainant will then have 30 days from the date of the decision to ask the commissioner to refer the matter to a provincial judge for review. Reviews are arranged by LERA and the Provincial Court at no cost to the complainant.

### **Does a complainant need a lawyer?**

Complainants do not require a lawyer when dealing with LERA. Complainants and the police are both entitled to legal representation during the process if they choose. However, they must arrange for such services themselves.

If complainants apply for legal aid and do not qualify, they may, in exceptional circumstances, make a request to the minister of justice to appoint a lawyer to represent them at a hearing. Counsel may be appointed by the minister, only where the applicant cannot afford to retain legal counsel.

Police officers are generally represented by a lawyer who is provided under their employment contract or collective agreement.

## **How is a complaint resolved?**

The act provides several ways to resolve a complaint. When the commissioner decides that there is sufficient evidence to justify referring the complaint to a provincial judge for a public hearing, *The Law Enforcement Review Act* provides several ways to resolve that complaint.

### **Informal Resolution:**

The commissioner must try to resolve the complaint through informal mediation. Both the complainant and the respondent police officer must agree to this process before it can take place. If the complaint is resolved informally, to the satisfaction of both complainant and respondent, no further action is taken and no record of the incident is made on the officer's service record.

### **Admission of Disciplinary Default:**

A respondent police officer can admit to the alleged officer misconduct. The commissioner then reviews the officer's service record and consults with the police chief before imposing a penalty.

### **Referral to Judge for Hearing:**

If a complaint cannot be resolved informally, and there is no admission of misconduct by the police officer, the commissioner must refer the complaint to a provincial judge for a public hearing.

Penalties that may be imposed by the provincial judge on the respondent under *The Law Enforcement Review Act* are:

- dismissal
- permission to resign, or summary dismissal if the resignation is not received within seven days
- reduction in rank
- suspension without pay for up to 30 days
- loss of pay for up to 10 days
- loss of leave or days off for up to 10 days
- a written reprimand
- a verbal reprimand
- an admonition

## **LERA as an Agency**

The Law Enforcement Review Agency (LERA) is an independent agency of Manitoba Justice, Criminal Justice Division, under *The Law Enforcement Review Act*.

The Lieutenant-Governor in Council charges the minister of justice, as a member of the executive council, with the administration of *The Law Enforcement Review Act*.

*The Law Enforcement Review Act* authorizes the Lieutenant-Governor in Council to appoint a commissioner.

The commissioner carries out investigations in compliance with *The Law Enforcement Review Act* and has powers of a commissioner under Part V of *The Manitoba Evidence Act*.

LERA is staffed by a commissioner, an administrative officer/registrar, four investigators and a clerk.

## **How to Reach the Law Enforcement Review Agency**

### **By Mail:**

420-155 Carlton Street  
Winnipeg MB R3C 3H8

### **By Phone:**

204-945-8667  
1-800-282-8069 (toll free)

### **By Fax:**

204-948-1014

### **By Email:**

[lera@gov.mb.ca](mailto:lera@gov.mb.ca)

**Website:** [www.gov.mb.ca/justice/lera](http://www.gov.mb.ca/justice/lera)

## **Website Overview – 2011**

LERA's website went online in September 2000. This site contains the following information:

- How to Make a Complaint
- History
- Contact Us
- *The Law Enforcement Review Act* and Regulation
- Public Hearings and Reviews
- News Releases
- Annual Reports
- Links
- Site Map
- Disclaimer and Copyright

**2011 Web Trends Report:**

Visitors .....34,804  
 Pages viewed .....29,285  
 Average pages viewed per day .....95

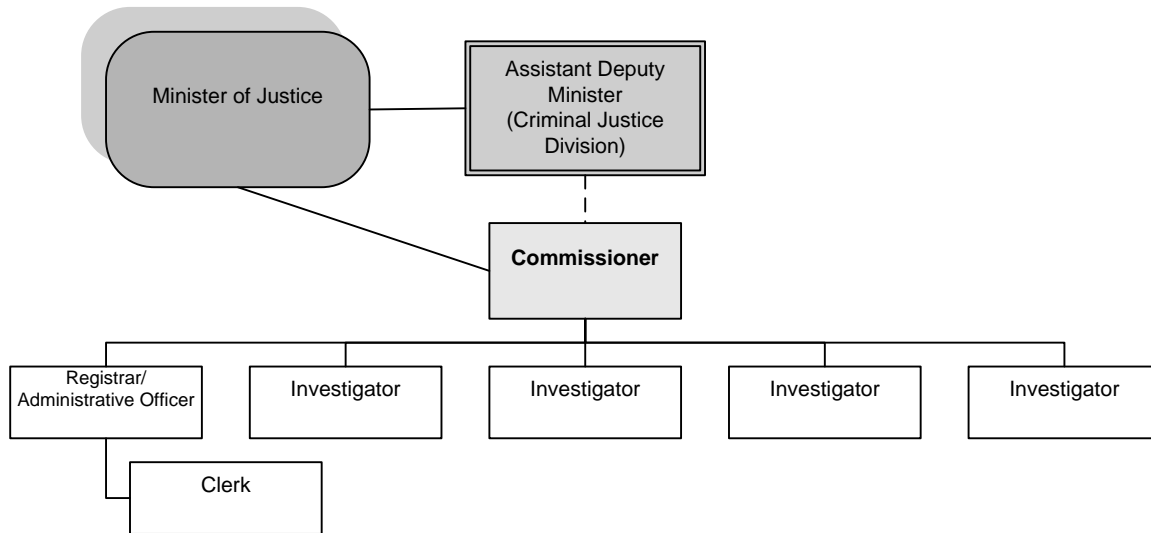
**Organizational Structure**

The commissioner is required to submit an annual report on the performance of his duties and functions to the minister and to each municipality in the province that has established a police service.

From an administrative perspective, the commissioner reports directly to Criminal Justice Division’s assistant deputy minister.

LERA’s budget for the financial year beginning April 1, 2011 and ending March 31, 2012 is:

Full Time Employees	7
Total Salaries (\$000`s)	\$505
Total Operating Budget (\$000`s)	<u>\$109</u>
<b>TOTAL</b>	<b>\$614</b>



## Activities

During the year, the commissioner and/or staff:

- participated in meetings with the minister of Manitoba Justice and deputy minister of Manitoba Justice
- participated in meetings with the assistant deputy minister of Manitoba Justice, Criminal Justice Division
- participated in meetings and discussions with police executives, police associations, members of police services and municipal officials
- attended reviews of the commissioner's decisions and public hearings presided over by a provincial judge acting *persona designate*
- met with chief and associate chief judges of the Provincial Court
- participated in Manitoba Bar Association Law Day open house at Manitoba Law Courts Complex
- presented to Brandon Police Service members on *The Law Enforcement Review Act*
- attended graduation ceremonies for Winnipeg Police Service recruit classes
- attended Manitoba Organization and Staff Development training courses
- participated in various media interviews
- presented to students taking Policing in Canada at the University of Winnipeg
- presented to students at the Northwest Law Enforcement Academy
- presented to students taking Police Studies at Assiniboine Community College
- met with Manitoba Ombudsman staff
- attended 6<sup>th</sup> Annual Manitoba Council of Administrative Tribunals Conference (MCAT)
- attended 9<sup>th</sup> Annual Crown Defence Conference
- attended 7<sup>th</sup> annual lecture by Supreme Court Justice Marshall Rothstein at University of Winnipeg
- presented to Winnipeg Police Service recruit and cadet classes on *The Law Enforcement Review Act*
- attended the 2011 Canadian Association of Civilian Oversight of Law Enforcement (CACOLE) Conference (LERA commissioner, is past president of CACOLE)
- attend a meeting with other provincial civilian oversight agencies hosted by the Commission for Public Complaints Against the RCMP
- attended a conference planning meeting for the Canadian Association of Civilian Oversight of Law Enforcement
- met with the inspector of the Professional Standards Unit, Winnipeg Police Service
- emailed provincial court decisions about LERA matters to all Manitoba police agencies
- met with the executive director of the Manitoba Police Commission
- met with the chair of the Manitoba Police Commission
- attended the 10<sup>th</sup> annual Keep the Fires Burning celebration
- presented to Police Organization and Management in a Democratic Society class at Brandon University
- presented to Dakota Ojibway Police Service (DOPS) recruits

## **Acknowledgements**

- members of the public who make their complaints and concerns known to LERA
- complainants and respondents who are able to resolve their differences by informal resolution
- chiefs of police of Manitoba's municipal police services
- police associations and members of Manitoba's municipal police services
- legal counsel and advocates helping complainants and respondents
- Manitoba Justice officials for their help and expertise
- LERA's staff, whose competence and commitment are vital to LERA's success as a civilian oversight of law enforcement agency
- the province's Information Systems Branch for maintenance of LERA's computerized data system
- the many other stakeholders involved in the LERA process

### Commissioner's Decision to Take No Further Action

*When LERA receives a complaint, the commissioner assigns a staff investigator to investigate the complaint. When the investigation is completed, the commissioner reviews the results and decides to take no further action in cases where:*

- *the complaint is frivolous or vexatious*
- *the complaint is outside the scope of the disciplinary defaults listed in section 29 of The Law Enforcement Review Act (the act)*
- *there is insufficient evidence to justify referring the matter to a public hearing*
- *the complaint has been abandoned*

*The commissioner performs an important gate-keeping function that ensures complaints that have no chance of success do not go to a public hearing. This function ensures that the LERA process runs more smoothly and efficiently and preserves the legitimacy of the LERA process with the public.*

Following are samples of cases in 2011 in which the commissioner decided no further action was required:

- A man was upstairs at a friend's place when officers came to the door. When the door was opened upstairs, the police officers heard a person say they could not come in without a warrant. Eventually, the partner of the person who owned the house let the police in. The police searched and at first could not find the complainant but then brought a dog in to find him. The dog pulled the complainant out from hiding and the complainant said the dog bit him. The complainant said the officers then began kicking him, causing injuries.

*After an investigation the commissioner determined that there was not sufficient evidence substantiating the complainant's allegations to warrant a hearing and declined to take further action on the file.*

\* \* \* \* \*

- The police raided a man's house looking for drugs. The raid was a result of pictures on Facebook of the complainant's older son with a shot gun and a huge pile of cash. The complainant's son does not live with him. The man said the police dragged him outside by the hair and that he was only wearing underwear. He also said the police needlessly damaged his garage to get inside, after he had told them he had a key for it. He said they also searched his truck without a proper warrant. No drugs were found and no charges were laid. The man said he was treated in this manner because the police thought he was Aboriginal.

*After an investigation the commissioner determined that there was not sufficient evidence substantiating the complainant's allegations to warrant a hearing and declined to take further action on the file.*



\* \* \* \* \*

- After receiving a call that their 21-year-old son was in custody, a man and his wife went to the police station. They were not allowed to see their son. The man told the police he only wanted to see his son to make sure he was alright. The police wouldn't allow it; asked the man to leave; and said they would remove him if he didn't go. The man said he told police: "Then remove me." He said the police officer charged at him, causing him to hit a door and fall. He said that while he was on the ground, the officers kicked and punched him repeatedly causing several injuries. He said the police used excessive force.

*After an investigation the commissioner determined that there was not sufficient evidence substantiating the complainant's allegations to warrant a hearing and declined to take further action on the file.*

\* \* \* \* \*

- While driving, a man got out of breath due to a medical condition. He pulled over and got out of his vehicle. He said he was kneeling down on a private driveway with his arms across his chest and his chest almost on his knees when the police came around the corner. One of the police officers allegedly grabbed him by the neck, pushed him forward causing his head to hit the pavement. The police handcuffed him and took him to the police station. He said his wallet fell from his pants and the officers took it. The man alleges he told police he needed to go to the hospital when he was taken into custody and again when he got to the police station.

When alone in an interview room, the man began making banging noises; an officer came to see him and then called an ambulance. When he got his wallet back, the man claimed money was missing. The man's complaint included use of excessive force, stolen money, allegations of drug use, refusal of medical treatment, unlawful vehicle search and failure to advise why he was under arrest.

*After an investigation the commissioner determined that there was not sufficient evidence substantiating the complainant's allegations to warrant a hearing and declined to take further action on the file.*

\* \* \* \*

- A woman was driving home from work. A police car was in front of her. When she passed the police car, she said she put her video camera on her dashboard. The police put the siren on to pull her over. She said the police officer began yelling as he approached the car, and told her that if they caught her with the video camera on again, she would get a ticket. The woman felt she was pulled over for no reason and the police were rude to her.

*After an investigation the commissioner determined that there was not sufficient evidence substantiating the complainant's allegations to warrant a hearing and declined to take further action on the file.*

\* \* \* \* \*

**Provincial Judges' Reviews of Commissioner's Decision to Take No Further Action**

*When the commissioner declines to take further action on a complaint, the complainant may apply to the commissioner to have the decision reviewed by a provincial judge. Section 13(2) of the act says the commissioner must receive this application within 30 days after the date the decision was sent to the complainant.*

*Once the commissioner receives an application for a review, he sends it to the chief judge of the Provincial Court who assigns a judge to hold a review hearing. At the hearing, the judge must decide whether the commissioner made an error in refusing to take further action on the complaint.*

Following are samples of these applications:

- A man was standing at a convenience store waiting for a cab to take him home when two police cars came into the parking lot. The police arrested him for being drunk in a public place. The man was searched and handcuffed. He said he was arrested without reasonable grounds.

The commissioner declined to take further action because there was insufficient evidence to justify a public hearing. The man asked to have a provincial judge review the commissioner's decision.

*DECISION: The judge held that the commissioner had not made an error by not taking further action on this complaint.*

\* \* \* \* \*

- A man called 911 about a former friend banging repeatedly on his window. He did not want the friend in his home. When the complainant went outside to check his garage, the police arrived and thought he was the friend the complaint was about. The man told police he was the one who called. He said the police would not listen to him and treated him roughly, causing an injury.

The commissioner declined to take further action because there was insufficient evidence to justify a public hearing. The man asked to have a provincial judge review the commissioner's decision.

*DECISION: The judge held that the commissioner had not made an error by not taking further action on this complaint.*

\* \* \* \* \*

- A woman was allegedly caught shoplifting at a grocery store. The police were called and they arrested her. She stumbled several times when the police were taking her to the police car. She said the police officers would not slow down so she could walk and she struggled with them to keep from being dragged. She said the handcuffs were put on too tight; that the police officer made comments about her past history with the law; called her a “criminal;” and was verbally abusive.

The commissioner declined to take further action because there was insufficient evidence to justify a public hearing. The woman asked to have a provincial judge review the commissioner’s decision.

*DECISION: The provincial judge ordered that the complaint be returned to LERA for further investigation.*

*The investigation was re-opened as directed by the provincial judge which resulted in no new evidence supporting the complaint. The matter was closed.*

\* \* \* \* \*

- Police officers went to a residence with a warrant for a man’s arrest. The man saw the police coming and hid in the attic of the house. The police found the man, handcuffed and arrested him. The man said the police repeatedly slapped, kicked and punched him before they took him to the police station. At the station, the man was put in an interview room. He said the officers used threats to make him give a written statement and made him sign it. He said they told him he did not need to call a lawyer. The man said the officers were rude and used excessive force in trying to get him to provide the statement.

The commissioner declined to take further action because there was insufficient evidence to justify a public hearing. The man asked to have a provincial judge review the commissioner’s decision.

*DECISION: The complainant’s lawyer appeared before the judge advising his client wished to withdraw the complaint.*

\* \* \* \* \*

- Police officers went to a man’s house to do a curfew check. The man they were checking on answered the door. The man then went to close the door and the officers asked for his papers. The man said he went to get them and when he returned, the officers were getting into the police car.

He said he asked if the police still wanted the papers and they said: “No.” The police later did a computer check and saw that the conditional sentence the man had been given stated a copy of the order was to be provided whenever the man was interacting with the police. The police returned to arrest the man for violation of the order. The man wasn’t home the first two times they went to arrest him, so the police parked near the house and arrested the complainant when he came home. The police advised him of his legal rights when they arrested him. The man said the police officers were harassing him.

The commissioner declined to take further action because he said that the incident was outside of the scope of *The Law Enforcement Review Act*. The man asked to have a provincial judge review the commissioner’s decision.

*DECISION: The complainant withdrew his complaint in a letter to the court.*

\* \* \* \* \*

- A man was detained for approximately 2 hours and 20 minutes under *The Intoxicated Persons Detention Act*. The man said that he was kidnapped by police, unreasonably searched, arbitrarily detained and denied his right to counsel. The man was also concerned that there would be a record of his arrest and he wanted any such record destroyed. The officers said that they were responding to a complaint of a disturbance. They said that the man was detained while fleeing the scene of a disturbance. The officers said that the man appeared to be intoxicated by alcohol and was not properly clothed for the very cold weather. The officers said that they detained the man for his own safety and read him his *Charter* rights, but the man declined his right to contact a lawyer.

The commissioner declined to take further action because there was insufficient evidence to justify a public hearing. The man asked to have a provincial judge review the commissioner’s decision.

*DECISION: The provincial judge held that the commissioner had not made an error by not taking further action on this complaint.*

### Informal Resolution of Complaints

*Under Section 15 of the act, the commissioner provides the complainant and respondent with an opportunity to informally resolve the complaint. The process is often, but not always, successful. To be successful, the process must satisfy each of the parties involved. There is no single model for informal resolutions. They can range from a simple explanation of a police officer's action or a discussion to clear up a misunderstanding, to an apology or reimbursement for damages caused in the incident.*

Following are examples of complaints resolved informally in 2011:

- The police went to a residence looking for a man who had two outstanding arrest warrants. The man was alleged to have left threatening messages on his ex-girlfriends voice mail. The man had a history of violent offences with weapons, including firearms. The police found him at the residence and arrested him. While the police were taking the man to the police car, there was a physical confrontation and the complainant said the officers verbally berated him while driving to the police station. He said the abuse continued at the police station; that the police used unnecessary violence; and that he had suffered minor injuries.

The commissioner referred this complaint to a hearing and the judge referred the matter back to LERA for an informal resolution.

*The complaint was resolved informally between the officers and the complainant.*

\* \* \* \* \*

- A man was driving and came up behind a police car. He said he thought the police were parked and he pulled up on their left to make a turn. He said one of the officers yelled out the window, swore at him and said he was blocking their view. The complainant said the officer screamed at him to back up but there was then another car behind him. The police signalled to the other car to back up as well. The complainant then backed up and parked the car. He said when he tried to get out of his car to ask the other driver to be a witness, the police officer slammed the door on his foot.

*The complaint was resolved informally between the officer and the complainant.*

\* \* \* \* \*

- Two men were going home after work in the early morning. The driver stopped to let his friend out of the car when they heard a siren. They said they were surrounded by police vehicles, officers with guns drawn and police dogs. They said the police were yelling orders at them and using bad language. When the two men got out of their car, they said the police told them to lie on the ground. When they lay down on the ground, one of the men said he was hit on the head. Both men made complaints to LERA.

LERA found that the officers had been investigating a complaint of armed robbery in the area. The suspects and the vehicle they were looking for closely matched the two complainants and their car. The officers said that once they realized the men were not involved in the robbery, they released them.

*The complaint was resolved informally between the officers and the two men.*

\* \* \* \* \*

**Public Hearings Before a Provincial Judge**

*Public hearings under the act are held before provincial judges. The judges do not sit in their usual capacity as members of the Provincial Court. A public hearing is only held after a matter has been referred by the commissioner under section 17 of the act.*

*Where a public hearing has been referred by the commissioner, section 27(2) of the act states:*

*“The provincial judge hearing the matter shall dismiss a complaint in respect of an alleged disciplinary default unless he or she is satisfied on clear and convincing evidence that the respondent has committed the disciplinary default.”*

*The “clear and convincing evidence” standard was added to the act in 1992. It is not worded the same as the more traditional standards that are used in other contexts. In criminal cases, the standard is “beyond a reasonable doubt,” which was used in the act until 1992. In civil cases, the standard is “balance of probabilities.” Provincial judges have held that the “clear and convincing evidence” standard falls between the civil and criminal standards of proof.*

Following are the results of public hearings on the merits of complaints heard in 2011:

- A man was riding in a friend’s car when the vehicle was pulled over by the police. The man tried to place a small amount of drugs between the seats when the police officers drew their guns and said to put his hands up. He said the police pulled him out of the car and started kicking and punching him, causing several injuries. He also said an officer used a taser on his lower back. The police then called an ambulance for the complainant. The man admitted being on methamphetamines at the time of the incident. He was arrested and charged with various trafficking offences.

Officer Misconduct:            three police officers

Allegations:                    abuse of authority by using unnecessary violence or excessive force

Disposition:                    *The complainant withdrew his complaint before the hearing.*

\* \* \* \* \*



- Police officers went to a man’s residence to arrest him. They took him outside to the back, where one of two police cars was parked. The man said the officers began kicking and kneeling him saying he was resisting arrest. They put the complainant in the car and took him to the station. The man said he was assaulted in a cell by two of the same officers. He said they told him that when he was asked if he needed to talk to a lawyer or to have one there while he was giving his statement, he should say: “No.”

Officer Misconduct:        four police officers

Allegations:                abuse of authority by using oppressive or abusive conduct or language; and abuse of authority by using unnecessary violence or excessive force

*Disposition:*                *The complaint was resolved informally before the hearing.*

\* \* \* \* \*

- A couple was having a housewarming party in the backyard. The police went in response to a complaint about noise. The officers asked the husband for identification and requested he turn the music down. The husband did not provide ID when asked and said that since it was still early in the evening, they did not have to be quiet. The officer arrested the man for breach of the peace because he refused to comply with the police request. The couple said one of the officers threatened them with a taser while they were wet. They also complained that the officers threatened them in front of their guests. The officers said they felt threatened by the complainants and called for police backup to help them shut down the party.

Officer Misconduct:        one police officer

Allegations:                abuse of authority by making an arrest without reasonable or probable grounds

Officer Misconduct:        three police officers

Allegations:                abuse of authority by using oppressive or abusive conduct or language; and abuse of authority by being discourteous or uncivil

*Disposition:*                *The judge, while attempting to set a hearing date, received no response from the complainant, so the matter was closed as abandoned.*

\* \* \* \* \*

- A woman was walking down a street late one evening. She was knocking on doors, saying she was looking for someone. The police were called by one of the residents on the street. The woman approached the police car when they drove up and claimed one of the officers punched her, threw her to the ground and broke her arm. She was taken to the hospital.

Officer Misconduct: one police officer

Allegations: abuse of authority by using oppressive or abusive conduct or language; abuse of authority by being discourteous or uncivil; and abuse of authority by using unnecessary violence or excessive force

*Disposition: At the hearing, the complainant's counsel withdrew the complaint.*

\* \* \* \* \*

- A man was driving his vehicle when another vehicle pulled up beside him on the roadway. The man alleged that the driver of the other vehicle flashed a badge of some sort, yelled at the man, used intemperate language, and then sped away. The driver of the other vehicle was an off-duty police officer.

Officer Misconduct: one police officer

Allegations: abuse of authority, by using oppressive or abusive conduct or language; and abuse of authority by being discourteous or uncivil

*Disposition: The allegations were dismissed by the Judge, finding in favour of the officer who had made a motion for dismissal based on his assertion that he was off duty at the time. As a result, the Commissioner, under The Law Enforcement Review Act didn't have the jurisdiction to refer the matter to a public hearing.*

\* \* \* \* \*

## **Contributing Causes**

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Section 22 of *The Law Enforcement Review Act* states:

*“When the commissioner identifies organizational or administrative practices of a police department which may have caused or contributed to an alleged disciplinary default, the commissioner may recommend appropriate changes to the chief of police and to the municipal authority which governs the police department.”*

### **Incidents that resulted in recommended changes:**

A man took part in a special event that involved a bicycle ride with a police escort. After the ride, the man and other participants were arrested and then released. A few days later, the complainant contacted police to discuss some property he said was missing after the arrest. He posted information about the incident on his blog. Several days later, police contacted the man’s boss and released details of the arrest and their concerns that the man had breached the employer’s code of conduct.

The commissioner was concerned that the information was improperly disclosed to the employer. He wrote to the chief of the police agency requesting that all members of the police service be reminded of their obligation to only disclose information received in their capacity as police officers when required for police purposes.

The police agency responded, saying that the information had been forwarded to the training unit to ensure that new recruits and current members are aware of their responsibilities.

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## Statistical Analysis

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- LERA's jurisdiction extends to 12 police services with 1,618 police officers. Total population served is 767,653.
- Winnipeg Police Service accounts for 88 per cent of complaints made to LERA. Brandon Police Service accounts for seven per cent and other services account for the remainder.
- There were 260 files opened in 2011, down by six complaints in 2010. The five-year average is 277 new files per year.
- The number of formal complaints filed (169) is up from 140 formal complaints in 2010.
- Ninety-one (91) complaints were resolved at intake or after preliminary enquiries compared to 126 in 2010.
- In 2010, there were 274 total investigations. There were also 274 investigations in 2011.
- There was a decrease in the number of investigations completed in 2011, down by five files, to 166 investigations completed in 2011.
- There has been an increase in the number of allegations of disciplinary defaults in three of the main categories: abuse of authority; using oppressive or abusive conduct or language; using unnecessary violence or excessive force.
- There were no complaints alleging the misuse of pepper spray in 2011.
- There were three complaints of misuse of the taser.
- There were 12 incidents alleging misuse of handcuffs in 2011, down one from 2010.
- Incidents alleging injuries from the use of force increased to 70 from 66 in 2010. Allegations of injuries were made in 41 per cent of complaints investigated.
- There were four informal resolutions of complaints in 2011, up from one in 2010. LERA continues to actively support and, whenever possible, engage in alternative dispute resolution to restore social harmony between the parties. This method of resolution remains a priority and complainants and respondents are encouraged to use it.
- The percentage of complaints abandoned by complainants increased from 2010. LERA investigators contact complainants after the investigation is completed but before a final decision letter is written. In many cases, when complainants learn the results of the investigation, they drop the complaint. In other cases, when a LERA investigator is unable to locate the complainant, a letter is sent to the complainant's last known address

asking the complainant to contact the investigator. If contact is not made within 30 days, the complaint is considered abandoned and a registered letter is sent stating that. (See Table 9)

- Complainants' requests for judges to review the commissioner's decisions was up by seven requests to 20 in 2011. The five-year average is 16. (See Table 11)
- LERA does not do criminal investigations. When a case shows evidence that a criminal offence may have been committed, the commissioner or provincial judge must report it to the attorney general and a criminal investigation is done.

If there is an indication of a crime, LERA investigators will tell the complainant that a criminal complaint may also be made to the police force where the incident occurred. In 2011, eight criminal complaints were made after a LERA complaint was also filed. This was down three from 2010. (See Tables 12 and 13)

- During a criminal investigation against an officer or a complainant, the LERA investigation is put on hold. Criminal investigations and related court appearances often take months or even years to get through the judicial system. This is beyond the control of LERA, but it adds greatly to the length of time needed to complete investigations.

The completion of investigations within a reasonable time line is always of concern and is a continuing objective. A **decrease** from eight months in 2010, to six months in 2011 was achieved. (See Tables 15 and 16)

- The average age of a complainant is 23. The oldest complainant was 69 and the youngest was 12. (See Table 18)

## Analyse statistique

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- La compétence de l'Organisme chargé des enquêtes sur l'application de la loi (OCEAL) s'étend à 12 services de police, ce qui représente 1 618 policiers. Au total, l'organisme sert 767 653 personnes.
- Un total de 88 % des plaintes déposées auprès de l'OCEAL concernent le Service de police de Winnipeg. Vient ensuite le Service de police de Brandon, avec 7 %, les autres services se partageant le reste.
- L'OCEAL a ouvert 260 dossiers en 2011, ce qui représente une diminution de six plaintes par rapport à 2010. La moyenne annuelle des cinq dernières années s'élève à 277 nouveaux dossiers par an.
- Un total de 169 plaintes officielles ont été déposées, comparativement à 140 en 2010.
- L'OCEAL a pu régler 91 plaintes dès leur réception ou après une enquête préliminaire, comparativement à 126 en 2010
- Il y a eu 274 enquêtes au total en 2010 et le même nombre en 2011.
- Le nombre d'enquêtes terminées en 2011 s'élevait à 166, soit cinq de moins que l'année précédente.
- Il y a eu une augmentation du nombre d'allégations de fautes disciplinaires enregistrées dans trois des grandes catégories : abus de pouvoir, comportement ou propos oppressifs ou excessifs, usage de violence gratuite ou de force excessive.
- L'utilisation abusive de vaporisateur de poivre n'a fait l'objet d'aucune plainte en 2011.
- Il y a eu trois plaintes portant sur l'utilisation abusive du Taser.
- Il y a eu 12 incidents relatifs à une utilisation abusive des menottes en 2011, soit un de moins qu'en 2010.
- Il y a eu 70 allégations de blessures liées au recours à la force, comparativement à 66 en 2010, ce qui représente 41 % du nombre de plaintes pour lesquelles il y a eu enquête.
- Il y a eu quatre résolutions sans formalités en 2011, comparativement à une en 2010. L'OCEAL continue de soutenir activement le règlement extrajudiciaire des différends qui vise à rétablir l'harmonie sociale entre les parties concernées et il y participe dans la mesure du possible. Cette méthode de règlement reste prioritaire, et plaignants et défendeurs sont encouragés à participer à ce processus.
- Le pourcentage de plaintes abandonnées par les plaignants a augmenté par rapport à 2010. Les enquêteurs de l'OCEAL communiquent avec les plaignants une fois l'enquête terminée, mais avant qu'une lettre finale ne soit rédigée. Dans bien des cas, lorsque les

plaignants apprennent les résultats de l'enquête, ils abandonnent la plainte. Dans d'autres cas, quand un enquêteur de l'OCEAL n'a pas pu trouver le plaignant, une lettre est envoyée à sa dernière adresse connue pour lui demander de communiquer avec l'enquêteur. Si aucun contact n'est pris dans un délai de 30 jours, la plainte est considérée comme étant abandonnée, et une lettre recommandée est envoyée à cet effet. (Voir le tableau 9)

- Un total de 20 plaignants ont demandé la révision par des juges de la décision du commissaire en 2011, soit sept de plus que l'année précédente. La moyenne sur cinq ans est de 16. (Voir le tableau 11)
- L'OCEAL n'effectue aucune enquête criminelle. Lorsqu'une affaire révèle qu'un acte criminel a peut-être été commis, le commissaire ou le juge de la Cour provinciale doit le signaler au procureur général, et une enquête criminelle est entreprise.

S'il y a indication d'acte criminel, les enquêteurs de l'OCEAL signalent au plaignant qu'une plainte au criminel pourrait également être déposée auprès de la force de police concernée. En 2011, huit plaintes au criminel ont été déposées auprès de la police lorsqu'une plainte était également déposée auprès de l'OCEAL, soit trois de moins qu'en 2010. (Voir les tableaux 12 et 13)

- Pendant qu'une enquête criminelle est menée contre un policier ou un plaignant, l'enquête de l'OCEAL est suspendue. Les enquêtes criminelles et les comparutions devant les tribunaux qui y sont liées prennent souvent des mois, voire des années, pour être traitées par le système judiciaire. Ce temps d'interruption est indépendant de la volonté de l'OCEAL mais il influence grandement le temps qu'il faut pour terminer les enquêtes.

Le traitement complet des enquêtes dans un délai raisonnable continue d'être un souci majeur et reste un objectif permanent. Ce délai est passé de huit mois en 2010 à six mois en 2011. (Voir les tableaux 15 et 16)

- L'âge moyen des plaignants était de 23 ans. Le plus âgé avait 69 ans et le plus jeune 12 ans. (Voir le tableau 18)

## 2011 Statistical Report – Data Tables

<b>Table 1: Complaints – Listed by Police Service**</b>	<b>Police Officers **</b>	<b>Population ***</b>	<b>2011 (n=169)</b>	<b>2010 (n=140)</b>	<b>2009 (n=169)</b>	<b>2008 (n=155)</b>	<b>2007 (n=188)</b>
<b>Altona</b>	7	4,088	1 (0.6%)	0	0	0	0
<b>Brandon</b>	82	46,061	12 (7%)	20 (14%)	6 (3.5%)	9 (6%)	13 (7%)
<b>Dakota Ojibway (DOPS)</b>	29	12,236	1 (0.6%)	1 (0.7%)	6 (3.5%)	4 (2.6%)	3 (1.6%)
<b>Morden</b>	14	7,812	0	2 (1.4%)	1 (0.6%)	0	2 (1%)
<b>Rivers</b>	3	1,189	0	0	0	0	0
<b>Ste. Anne</b>	5	1,626	2 (1%)	0	0	2 (1.3%)	2 (1%)
<b>Winkler</b>	16	10,670	2 (1%)	0	1 (0.6%)	1 (0.6%)	3 (1.6%)
<b>Winnipeg****</b>	1457	663,617	148 (88%)	116 (83%)	155 (92%)	138 (89%)	161 (86%)
<b>RM of Cornwallis*</b>	1	4,378	0	0	0	1 (0.6%)	0
<b>RM of Springfield*</b>	2	14,069	1 (0.6%)	1 (0.7%)	0	0	0
<b>RM of Victoria Beach*</b>	1	374	1 (0.6%)	0	0	0	1 (0.5%)
<b>RM of Whitehead*</b>	1	1,533	1 (0.6%)	0	0	0	1 (0.5%)
<b>Total</b>	<b>1618</b>	<b>767,653</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

\* Supplementary police service – RCMP have primary responsibility

\*\* Source: director, Aboriginal and Community Law Enforcement, Manitoba Justice

\*\*\* Source: Statistics Canada and Dakota Ojibway Police Commission

\*\*\*\* LERA's jurisdiction includes members of the Winnipeg Police Service Cadets



<b>Table 2: Public Complaints</b>	<b>2011</b>	<b>2010</b>	<b>2009</b>	<b>2008</b>	<b>2007</b>
Files Opened	260	266	297	252	308
Resolved at Intake	91	126	128	97	120
Formal Complaints Received	169	140	169	155	188

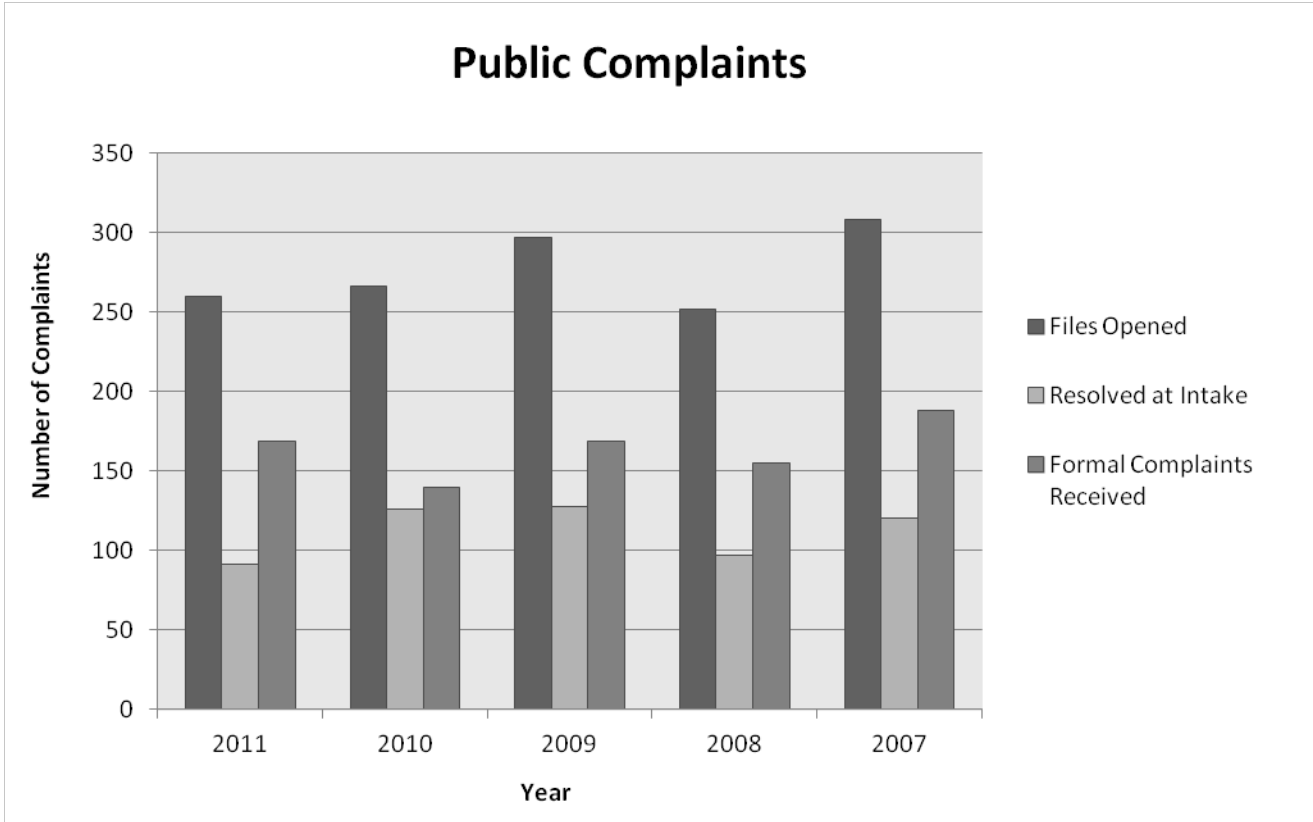
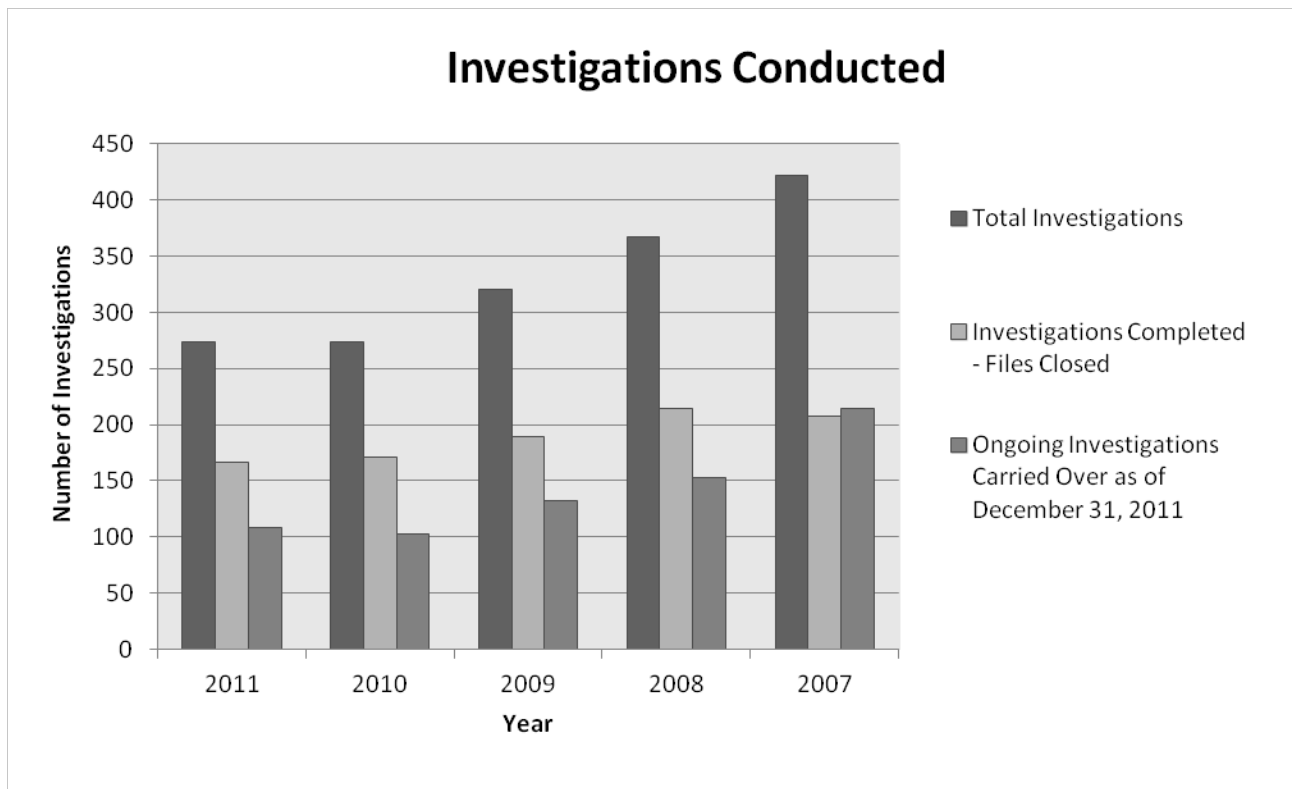


Table 3: Investigations Conducted	2011	2010	2009	2008	2007
Total Investigations	274	274	321	367	422
Investigations Completed - Files Closed	166	171	189	214	208
Ongoing Investigations Carried Over as of December 31, 2011	108	103	132	153	214



<b>Table 4: Complainants' Allegations: Discipline Code Section 29 <i>The Law Enforcement Review Act</i></b>	<b>2011</b>	<b>2010</b>	<b>2009</b>	<b>2008</b>	<b>2007</b>
Abuse of authority Subsection 29(a)	45	23	40	49	67
Arrest without reasonable or probable grounds Subsection 29(a)(i)	22	24	20	17	25
Using unnecessary or excessive force Subsection 29(a)(ii)	77	75	83	88	106
Using oppressive or abusive conduct or language Subsection 29(a)(iii)	60	48	66	79	88
Being discourteous or uncivil Subsection 29 (a)(iv)	49	41	34	35	56
Seeking improper personal advantage Subsection 29(a)(v)	0	0	0	0	0
Serving civil documents without proper authorization Subsection 29(a)(vi)	0	0	0	0	2
Differential treatment without cause Subsection 29(a)(vii) <i>The Human Rights Code</i> Subsection 9(2)	9	7	11	14	14
Making false statement(s) Subsection 29(b)	4	6	1	2	5
Improperly disclosing information Subsection 29(c)	4	6	9	6	4
Failing to exercise care or restraint in use of firearm Subsection 29(d)	0	0	1	3	0
Damaging property or failing to report damage Subsection 29(e)	6	9	6	9	7
Failing to provide assistance to person(s) in danger Subsection 29(f)	3	1	3	2	2
Violating person's privacy (under <i>The Privacy Act</i> ) Subsection 29(g))	1	3	0	0	1
Contravening <i>The Law Enforcement Review Act</i> Subsection 29(h)	0	1	0	0	1
Assisting any person committing a disciplinary default Subsection 29(i)	0	1	0	1	3

**Table 5: Incidents Alleging Misuse of Pepper Spray**

<b>2011 (n=0)</b>	<b>2010 (n=1)</b>	<b>2009 (n=0)</b>	<b>2008 (n=1)</b>
0% of 169 complaints investigated	1% of 140 Complaints investigated Winnipeg PS = 1	0 of 169 complaints investigated	1% of 155 complaints investigated Brandon PS = 1

**Table 6: Incidents Alleging Misuse of Handcuffs**

<b>2011 (n=12)</b>	<b>2010 (n=13)</b>	<b>2009 (n=14)</b>	<b>2008 (n=17)</b>
7% of 169 complaints investigated Winnipeg PS=12	9% of 140 complaints investigated Winnipeg PS = 12 Brandon PS = 1	8% of 169 complaints investigated Winnipeg PS = 10 Brandon PS = 1 Dakota Ojibway PS = 3	11% of 155 complaints investigated Winnipeg PS = 17

**Table 7: Incidents Alleging Misuse of Taser**

<b>2011 (n=3)</b>	<b>2010 (n=5)</b>	<b>2009 (n=4)</b>	<b>2008 (n=8)</b>
2% of 169 complaints investigated Winnipeg PS=2 St. Anne PS=1	4% of 140 complaints investigated Winnipeg PS = 5	2% of 169 complaints investigated Winnipeg PS = 4	5% of 155 complaints investigated Winnipeg PS = 6 Dakota Ojibway PS = 1 Brandon PS = 1

**Table 8: Incidents Alleging Injuries from Use of Force**

<b>011 (n=70)</b>	<b>2010 (n=66)</b>	<b>2009 (n=71)</b>	<b>2008 (n=79)</b>
41% of 169 complaints investigated Winnipeg PS=67 Brandon PS=2 St. Anne PS=1	47% of 140 complaints investigated Winnipeg PS = 59 Brandon PS = 6 Dakota Ojibway PS = 1	42% of 169 complaints investigated Winnipeg PS = 66 Brandon PS = 1 Dakota Ojibway PS = 4	51% of 155 complaints investigated Winnipeg PS = 76 Brandon PS = 2 Dakota Ojibway PS = 1

<b>Table 9: Disposition of Complaints</b>	<b>2011 (n=166)</b>	<b>2010 (n=171)</b>	<b>2009 (n=189)</b>	<b>2008 (n=216)</b>	<b>2007 (n=208)</b>
<b>Dismissed by commissioner as outside scope of act</b>	8 (5%)	7 (4%)	12 (6%)	6 (3%)	12 (6%)
<b>Dismissed by commissioner as frivolous or vexatious</b>	3 (2%)	1 (0.5%)	4 (2%)	5 (2%)	2 (1%)
<b>Dismissed by commissioner as not supported by sufficient evidence to justify a hearing</b>	84 (51%)	97 (57%)	81 (43%)	92 (43%)	90 (43%)
<b>Abandoned or withdrawn by complainant</b>	66 (40%)	54 (32%)	83 (44%)	104 (49%)	91 (44%)
<b>Resolved informally</b>	4 (2%)	1* (0.5%)	2 (1%)	4 (1%)	8 (4%)
<b>Public hearing before a provincial court judge</b>	1 (.6%)	11 (6%)	6 (3%)	5 (2%)	6 (3%)
<b>Admission of guilt by respondent officer</b>	0	0	0	0	0
<b>Disposed via criminal procedure</b>	0	0	1 (0.5%)	0	0

\* Although only one file was disposed of through informal resolution, there are two files discussed in the narrative section. The other file was not disposed of through informal resolution but was referred back to a hearing.

<b>Table 10: Legal Involvement of Complainants</b>	<b>2011 (n= 169)</b>	<b>2010 (n=140)</b>	<b>2009 (n=169)</b>	<b>2008 (n=155)</b>	<b>2007 (n=188)</b>
<b>No charges</b>	66 (39%)	46 (33%)	58 (34%)	53 (34%)	76 (40%)
<b>Traffic offences</b>	17 (10%)	13 (9%)	19 (11%)	12 (8%)	13 (7%)
<b>Property offences</b>	5 (3%)	6 (4%)	6 (4%)	10 (6%)	12 (6%)
<b>Intoxicated persons detention</b>	16 (9%)	6 (4%)	12 (7%)	9 (6%)	11 (6%)
<b>Cause disturbance</b>	2 (1%)	0	1 (0.6%)	1 (0.6%)	3 (2%)
<b>Assault police officer/resist arrest</b>	18 (11%)	22 (16%)	25 (15%)	23 (15%)	25 (13%)
<b>Impaired driving</b>	4 (2%)	1 (0.7%)	1 (0.6%)	3 (2%)	4 (2%)
<b>Offences against another person</b>	13 (8%)	10 (7%)	10 (6%)	23 (15%)	17 (9%)
<b>Domestic disputes</b>	1 (.6%)	3 (2%)	4 (2%)	1 (0.6%)	2 (1%)
<b>Drugs</b>	1 (.6%)	3 (2%)	27 (16%)	5 (3%)	N/A
<b><i>The Mental Health Act</i></b>	3 (2%)	9 (7%)	3 (2%)	N/A	N/A
<b>Other</b>	23 (14%)	21 (15%)	3 (2%)	15 (10%)	25 (13%)

<b>Table 11: Provincial Judges' Review of Commissioner's Decision to Take No Further Action</b>	<b>2011</b>	<b>2010</b>	<b>2009</b>	<b>2008</b>	<b>2007</b>
	20	13	21	21	16

<b>Table 12: Referrals by Commissioner of Complaint for Criminal Investigation</b>	<b>2011</b>	<b>2010</b>	<b>2009</b>	<b>2008</b>	<b>2007</b>
	1	1	1	0	0

<b>Table 13: Complainants Have Also Lodged a Criminal Complaint with Police</b>	<b>2011</b>	<b>2010</b>	<b>2009</b>	<b>2008</b>	<b>2007</b>
	8	11	14	9	20

**Table 14: Time Span of Ongoing Investigations Carried Over  
as of December 31, 2011**

<b>YEAR</b>	<b>1-3 Months</b>	<b>4-7 Months</b>	<b>8-12 Months</b>	<b>13-18 Months</b>	<b>19-23 Months</b>	<b>24+ Months</b>	<b>Total</b>
<b>2007</b>	0	0	0	0	0	1	<b>1</b>
<b>2008</b>	0	0	0	0	0	1	<b>1</b>
<b>2009</b>	0	0	0	0	0	5	<b>5</b>
<b>2010</b>	0	0	0	8	5	0	<b>13</b>
<b>2011</b>	39	29	20	0	0	0	<b>88</b>
<b>Total</b>	<b>39</b>	<b>29</b>	<b>20</b>	<b>8</b>	<b>5</b>	<b>7</b>	<b>108</b>

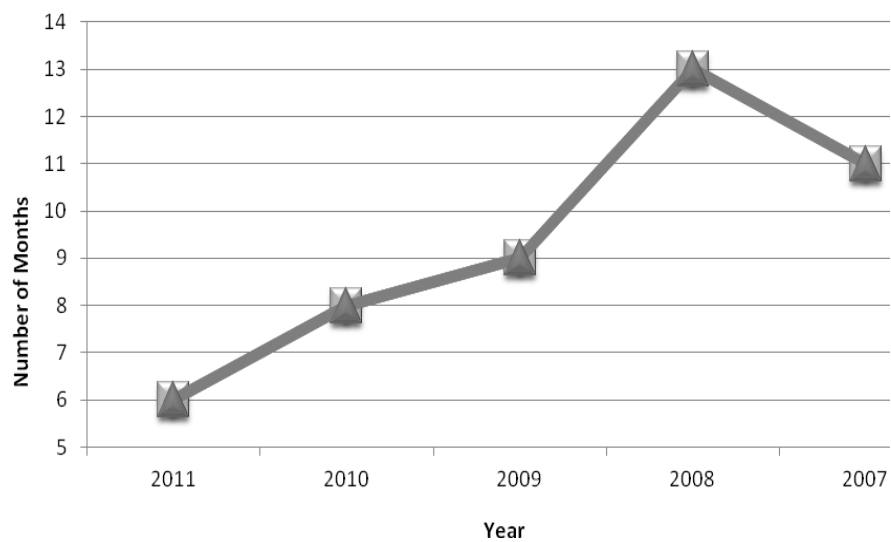
**Table 15: Files Concluded in 2011 by Year of Origin**

<b>Year</b>	<b>Number of Files</b>	<b>Average Time to Close Investigation</b>
<b>2007</b>	3	21 months
<b>2008</b>	3	16 months
<b>2009</b>	7	13 months
<b>2010</b>	72	7 months
<b>2011</b>	81	4 months
<b>Total</b>	<b>166</b>	<b>6 months</b>



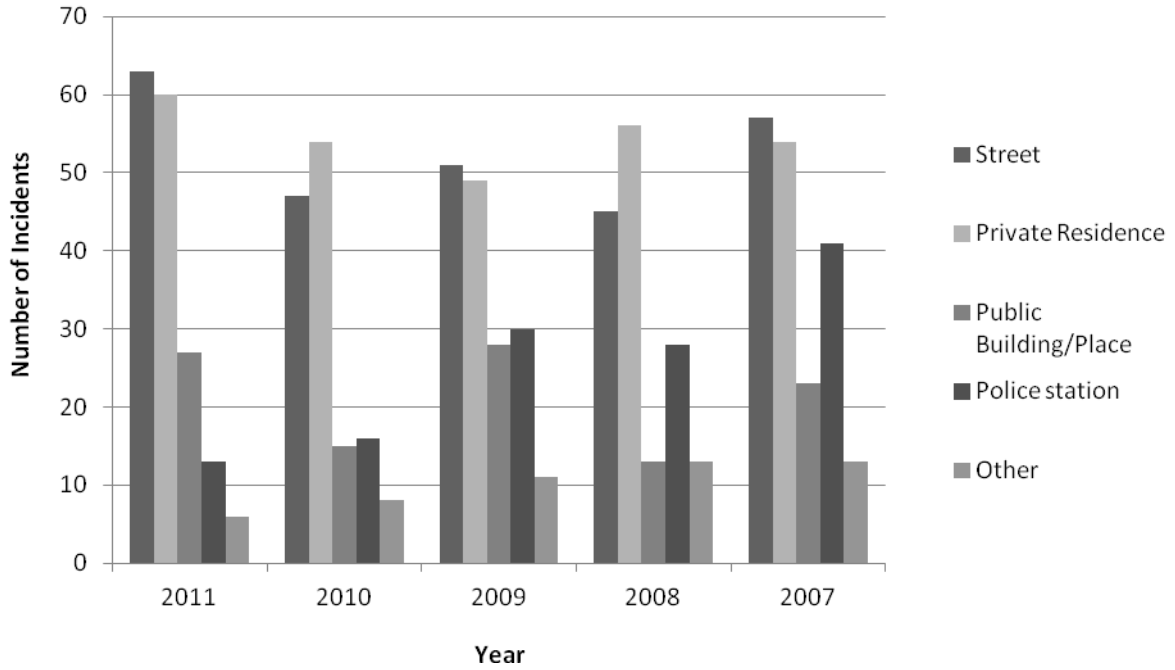
<b>Table 16: Length of Time to Complete Investigations</b>	<b>2011 (n=166)</b>	<b>2010 (n=171)</b>	<b>2009 (n=189)</b>	<b>2008 (n=214)</b>	<b>2007 (n=208)</b>
<b>1-3 Months</b>	56	45	49	43	54
<b>4-7 Months</b>	66	54	65	67	49
<b>8-12 Months</b>	32	35	36	39	51
<b>13-18 Months</b>	8	30	23	15	22
<b>19-23 Months</b>	2	2	5	11	10
<b>24+ Months</b>	2	5	11	39	22
<b>Average</b>	<b>6 months</b>	<b>8 months</b>	<b>9 months</b>	<b>13 months</b>	<b>11 Months</b>

**Average Number of Months to Complete Investigation**



<b>Table 17:</b>	<b>2011</b>	<b>2010</b>	<b>2009</b>	<b>2008</b>	<b>2007</b>
<b>Location of Incident</b>	<b>(n=169)</b>	<b>(n=140)</b>	<b>(n=169)</b>	<b>(n=155)</b>	<b>(n=188)</b>
<b>Street</b>	63	47	51	45	57
<b>Private residence</b>	60	54	49	56	54
<b>Public building/place</b>	27	15	28	13	23
<b>Police station</b>	13	16	30	28	41
<b>Other</b>	6	8	11	13	13

### Location of Incident



<b>Table 18: Complainant Demographics</b>	<b>2011 (n=169)</b>	<b>2010 (n=140)</b>	<b>2009 (n=169)</b>	<b>2008 (n=155)</b>	<b>2007 (n=188)</b>
<b>Male</b>	114 (67%)	84 (60%)	122 (72%)	111 (72%)	140 (74%)
<b>Female</b>	55 (33%)	56 (40%)	47 (28%)	44 (28%)	48 (26%)
<b>Over 50</b>	23 (14%)	25 (18%)	13 (8%)	21 (14%)	35 (19%)
<b>40 - 49</b>	41 (24%)	30 (21%)	29 (17%)	26 (17%)	32 (17%)
<b>30 - 39</b>	34 (20%)	33 (24%)	39 (23%)	38 (25%)	36 (19%)
<b>18 - 29</b>	42 (25%)	32 (23%)	58 (34%)	47 (30%)	34 (18%)
<b>Under 18</b>	19 (11%)	12 (9%)	21 (12%)	16 (10%)	22 (12%)
<b>Birth Date Unknown</b>	10 (6%)	8 (6%)	9 (5%)	7 (4%)	29 (15%)
<b>Average Age</b>	23	36	32	N/A	N/A
<b>Oldest Complainant</b>	69	64	72	N/A	N/A
<b>Youngest Complainant</b>	12	14	12	N/A	N/A

