

**Annual Report
1994**

**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 1994 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, 1994 to December 31, 1994.

I trust this meets with your approval.

Respectfully submitted,

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

Manitoba



Justice

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

Dear Minister:

I am pleased to submit my report for the period January 1, 1994 to December 31, 1994 in accordance with Section 45 of The Law Enforcement Review Act.

I trust that my report meets with your approval.

Respectfully submitted,

Norman C. Ralph, BA, MPA
Commissioner

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LERA's Role and Mission

LERA is an independent, non-police agency whose role is to accept and investigate public complaints alleging abuse of authority by on-duty police officers. Investigations are conducted by trained investigators in an impartial, open and publicly accountable manner.

The Commissioner of LERA is appointed by the Lieutenant Governor in Council and has such powers and shall carry out such duties and functions as are conferred or imposed under The Law Enforcement Review Act. For purposes of conducting investigations the Commissioner of LERA has all the powers of a Commissioner under Part V of The Manitoba Evidence Act.

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

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

LERA's mission is to deliver a judicious, impartial, client-oriented service to the public, and to the police services and peace officers that fall under our jurisdiction.

To be effective, we must be responsive to the varied backgrounds, needs and circumstances of those we serve. As a public-service agency, we actively support and, whenever possible, engage in alternative dispute resolution processes aimed at restoring and promoting social harmony between the affected parties.

How the LERA Process Functions

The Law Enforcement Review Agency (LERA) is an independent non-police agency established in 1985. It is mandated by The Law Enforcement Review Act to accept and investigate public complaints alleging abuse of authority by on-duty peace officers.

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

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

To whom does the Act apply?

The Act applies to any peace officer employed as a sworn member of a municipal police force, or any person otherwise empowered by regulation to act as a peace officer within a designated law enforcement body in Manitoba, except members of the RCMP.

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

Who can make a complaint to LERA?

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

Third-party complaints may be made on behalf of other persons. The Commissioner must, however, notify the affected person and obtain their consent before proceeding with an investigation into the complaint.

How is a complaint filed?

Complaints must be in writing, and signed by the complainant. Complainants' statements should set out the date, time, location and other particulars of the incident being complained about. If complainants need help preparing a complaint or making a statement, LERA staff or members of the local police service will assist them.

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

Are there any time limits?

The Act requires that complaints be submitted within 30 days of the incident. However, the Commissioner may extend the time to file if the complainant did not have a reasonable opportunity to file a complaint within the required time limit.

The Commissioner may also extend the 30-day filing limit in order to avoid conflict with court proceedings or ongoing criminal investigations, when criminal charges have been laid against the complainant in relation to the incident being complained about.

How is a complaint investigated?

LERA investigators take statements, obtain and review official police, medical and other reports, interview witnesses and conduct all necessary inquiries and investigations.

Complainants are encouraged to contact the Commissioner's office during the course of the investigation to inquire about the status of their complaint. The Commissioner shares all relevant information with complainants and respondents, and is open to discuss any findings with them before making a final determination on their complaint.

Legal Representation

Complainants and respondents do not require legal representation when dealing with LERA. However, parties to a complaint are entitled to be represented by legal or other counsel at any time during the process. If complainants or respondents choose to be represented, they must arrange for and provide those services themselves.

Respondent officers are generally represented by legal counsel, as provided under their employment services contracts. Complainants may apply for legal aid, and if declined the Commissioner may in exceptional circumstances apply directly to the Attorney General for the appointment of legal counsel.

Complaint Resolution

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

Informal Resolution:

Whenever possible, the Commissioner will attempt to resolve complaints through an informal mediated process. Both the complainant and the respondent officer must agree to an informal resolution before it can take place. When a complaint is resolved in an informal manner, it is not subject to any further appeal or action, and no record of the incident appears on the officer's service record.

Admission of Disciplinary Default:

When a respondent officer admits having committed the alleged misconduct, the Commissioner reviews the officer's service record and consults with the Chief of Police before penalty is imposed for the disciplinary default.

Referral to a Judge for Hearing:

When a complaint cannot be resolved through an informal process or by admission of fault by the respondent officer(s), and if the Commissioner does not decline to take further action, the Commissioner must refer the complaint to a provincial judge for disposition at a public hearing.

The Commissioner shall decline to take further action:

The Commissioner shall decline to take further action on a complaint when satisfied that:

- (a) the subject matter of a complaint is frivolous or vexatious;
- (b) the actions or conduct complained about do not fall within the scope of the Act;
- (c) the complaint has been abandoned by the complainant; or
- (d) there is insufficient evidence supporting the complaint to justify referring it to a judge for a public hearing.

When the Commissioner declines to take further action on a complaint, the complainant has the right to appeal. That appeal must be filed within 30 days after the Commissioner's notice has been sent. Appeals at the Provincial Court level are arranged by LERA without cost to the appellant. Appeals are heard by a provincial judge, whose decision on the matter is final.

Abuse of Authority Is Defined As:

Section 29 of the Act defines abuse of authority as follows. A member commits a disciplinary default when he affects the complainant or any other person by means of any of the following acts or omissions arising out of or in the execution of his duties:

- Making an arrest without reasonable or probable grounds.
- Using unnecessary violence or excessive force.
- Using oppressive or abusive conduct or language.
- Being discourteous or uncivil.
- Seeking improper pecuniary or personal advantage.
- Without authorization, serving or executing documents in a civil process.
- Discriminating on the basis of race, nationality, religion, colour, sex, marital status, physical or mental handicap, age, source of income, family status, political belief, or ethnic or national origin.
- Making a false statement, or destroying, concealing, or altering any official document or record.
- Improperly disclosing any information acquired as a member of the police department.
- failing to exercise discretion or restraint in the use and care of firearms.
- Damaging property or failing to report the damage.

- Being present and failing to assist any person in circumstances where there is a clear danger to the safety of that person or the security of that person's property.
- Violating the privacy of any person within the meaning of The Privacy Act.
- Contravening this Act or any other regulation under this Act, except where the Act or regulation provides a separate penalty for the contravention.
- Assisting any person in committing a disciplinary default, or counselling or procuring another person to commit a disciplinary default.

Potential Penalties for Abuse of Authority:

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

- Dismissal
- Permission to resign and, in default of resignation within seven days, summary dismissal.
- Reduction in rank.
- Suspension without pay up to a maximum of 30 days.
- Forfeiture of pay up to a maximum of ten days pay.
- Forfeiture of leave or days off not to exceed 10 days.
- A written reprimand.
- A verbal reprimand.
- An admonition.

1994 STATISTICAL REPORT - DATA TABLES

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

Increase in Complaints

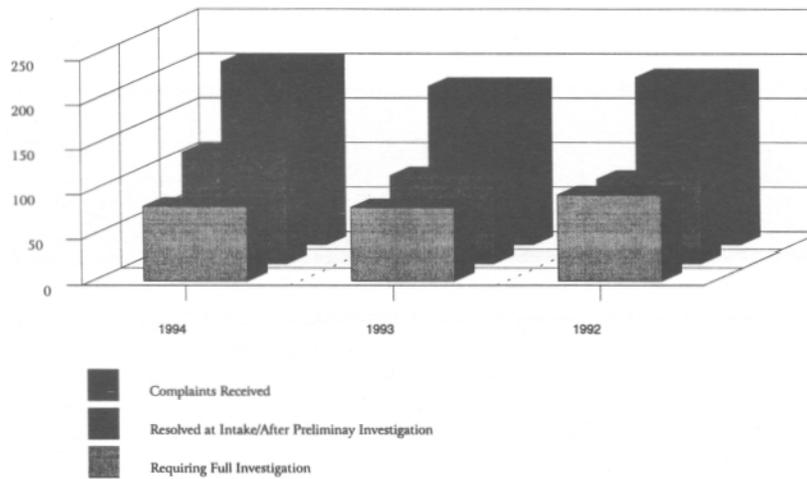


Table 2-Investigations	1994	1993	1992
Total Investigations	125	132	122
Investigations Completed-Files Closed	78(62%)	93(70%)	64(52%)
Ongoing Investigations Carried Over	47(38%)	39(30%)	58(48%)

**Table 3-Length of Time to Complete Investigations
(N=78)**

1 - 3 Months	14(18%)
4 - 7 Months	27(35%)
8 - 12 Months	20(26%)
13 - 18 Months	7 (9%)
19 - 23 Months	6 (7%)
24 + Months	4 (5%)
AVERAGE: 9 Months	

Table 4- Complainant Demographics

	1994	1993	1992
Male	53(65%)	55(68%)	73(77%)
Female	29(35%)	26(32%)	22(23%)
Age			
Over 50	8(10%)	5 (6%)	7 (7%)
40 - 49	17(21%)	18(22%)	17(18%)
30 - 39	17(21%)	28(35%)	25(27%)
18 - 29	25(30%)	26(32%)	38(40%)
Youths under 18	2 (2%)	4 (5%)	8(8%)
Birthdates N/A	13(16%)		

Table 5-Legal Involvement Of Complainants	1994	1993	1992
No Charges	35(43%)	38(47%)	44(46%)
Traffic Offences	10(12%)	8(10%)	8 (8%)
Property Offences	10(12%)	5 (6%)	9(10%)
Intoxicated Persons Detention	2 (2%)	5 (6%)	5 (5%)
Cause Disturbance	2 (2%)	0 (0%)	3 (3%)
Assault Police Officer/Resist Arrest	0 (0%)	3 (4%)	3 (3%)
Impaired Driving	2 (2%)	4 (5%)	3 (3%)
Offences Against Another Person	4 (5%)	5 (6%)	7 (7%)
Domestic Disputes	6 (8%)	2 (2%)	2 (2%)
Other	11(14%)	11(14%)	11(12%)

Table 6- Complainant's Allegations	1994	1993	1992
Abuse of authority	9	19	16
Arrest without reasonable or probable grounds		6	14
Using unnecessary or excessive force	37	29	43
Using oppressive or abusive conduct or language	38	19	36
Being discourteous or uncivil	30	19	24
Seeking improper personal advantage	1	0	1
Serving civil documents without proper authorization	0	0	0
Discrimination (age, race, sex, all types)	4	4	6
Making false statement(s)	3	1	0
Improperly disclosing information	3	2	4
Failing to exercise care or restraint in use of firearm	0	2	1
Damaging property or failing to report damage	4	2	1
Failing to provide assistance to person(s) in danger	6	5	1
Violating persons privacy (under The Privacy Act)	1	1	0
Contravening The Law Enforcement Review Act	0	0	0

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

Table 7-Incidents Alleging Misuse of Pepper Spray	1994 (n=14)	Police Service
	17% of 82 Complaints Investigated	Winnipeg=.12 Brandon= 1 Rivers= 1

Table 8-Incidents Alleging Injuries' from Use of Force	1994	Police Service
	28% of 82 Complaints Investigated	Winnipeg=21 Brandon= 1 Rivers= 1

Table 9-Location of Incident	1994 (n=82)	1993 (n=81)	1992 (n=95)
Private Residence	29(35%)	31(38%)	38(40%)
Street	29(35%)	24(30%)	29(31%)
Public Building/Place	10(12%)	19(23%)	24(25%)
Police Station	7 (9%)	7 (9%)	4 (4%)
Other	7 (9%)	N/A	N/A

Table 10- Police Service	1994	1993	1992
Altona	0 (0%)	0 (0%)	0 (0%)
Brandon	14(17%)	10(12%)	6 (6%)
RM Cornwallis	0 (0%)	1 (1%)	0 (0%)
RM East St. Paul	0 (0%)	0 (0%)	0 (0%)
Morden	0 (0%)	1 (1%)	0 (0%)
Rivers	1 (1%)	0 (0%)	0 (0%)
Ste. Anne	0 (0%)	1 (1%)	0 (0%)
RM St. Clements	0 (0%)	0 (0%)	0 (0%)
Victoria Beach	0 (0%)	0 (0%)	0 (0%)

Table 10- Police Service	1994	1993	1992
Winkler	2 (2%)	0 (0%)	0 (0%)
Winnipeg	64(79%)	68(85%)	89(94%)
Other	1 (1%)	0 (0%)	0 (0%)

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

Table 12-Appeals of Commissioner's Decision	1994	1993	1992
	(n=1)	(n=3)	(n=2)

The court upheld the Commissioner's decision in all 1992, 1993 and 1994 appeals.

Table 13-Referrals to Crown	1994	1993	1992
	(n=2)	(n=0)	(n=7)

All cases referred to the Crown in 1994 and 1992 involved allegations of assault by police. No charges were recommended by the Crown in any of these cases. The reason given for not proceeding in each case was insufficient evidence or the unlikelihood of successful prosecution.

Data Analysis

- There was a slight increase in complaints received in 1994 over the previous two years. However, a trend suggesting ongoing increases in public complaints should not be inferred based on this data alone. This finding will be tracked over time to determine if any trend develops.
- Complaints being resolved at the intake level, or after only preliminary investigation, show a slight but steady increase over complaints requiring full investigation before resolution.

Increasing familiarity with the amended LERA legislation and procedures, combined with more experience dealing with complainants and the issues they bring forward, would seem to be the most likely explanations for this finding.

- Total investigations completed are down a bit from 1993 and files carried over at year-end are up a little. The numbers do not appear to be significant at this time and are likely due to the slight increase in complaints received. Combined with the retirement of Del Hanson, a senior investigator, this increased the workload on remaining investigators.
- In 1994 my office began receiving complaints that our process was taking too long. This is a concern for an agency such as ours, so I have begun to track the length of time it takes my office to complete investigations (see Table 3).
- Male complainants continue to be in the majority, although the number of female complainants is increasing steadily. This is consistent with most criminological data, which indicate that criminal activity and therefore, by association, police/public interaction is a predominantly male problem, with some evidence of increasing female involvement.
- Adults 18-40 years of age, continue to represent the majority of LERA complainants. Youths and persons over the age of 50 continue to be the smallest age groups represented. This finding is also consistent with criminological data, which indicate that older persons and youths generally have less involvement in criminal activity and less interaction with police:
- There is a continuing trend indicating that the largest single grouping of people filing complaints with LERA is persons who have not been charged with an offence. This suggests that it is often something other than being charged that causes a person to complain about police conduct.

Our experience, and data continue to indicate that three behavioral factors strongly influence public complaints arising from interactions with police.

- (1) the manner in which police interact with the complainant,
- (2) the officers' attitude towards the complainant,
- (3) the amount of force used by police during the interaction.

It is interesting to note that respondent officers also cite these as reasons why they had problems dealing with the complainant during the incident in question. Not surprisingly, each party tends to accuse the other of being the one with a bad attitude.

- Complaints alleging arrest without reasonable or probable grounds are down significantly from previous years while complaints alleging police failure to provide assistance to persons in need of assistance are up. There are not enough data at this time to reliably determine if this is a trend or an anomaly. I will continue to monitor and report on these findings over time.
- One very positive statistic is the low number of complaints that allege police misconduct based on discrimination. This suggests that Manitoba's municipal police services are responding in a favorable manner to an increasingly diverse society. It may also reflect the fact that police forces are themselves becoming increasingly diverse, hiring more women and more people from different ethnic, racial and religious backgrounds.

It should be noted that while few in number, allegations of discrimination are most often associated with race and sex, with an increasing number of males alleging reverse sex discrimination most often associated with domestic disputes and family conflicts.

- Pepper spray is a relatively new weapon in the police arsenal. It is non-lethal and is intended to be used against violent and aggressive persons. The use of pepper spray should reduce the need for police to use other, more injurious weapons, such as batons, or deadly weapons such as guns.

There are some indications that when pepper spray is used during an altercation, police officers suffer fewer and less-debilitating injuries. There is, however, some concern as more complainants are alleging that the police are using pepper spray improperly; when there is no real need for it, or as a form of punishment when the officers are upset with someone's behavior. This is an emerging issue that my office will continue to monitor and report on.

- Another emerging issue is the number of complainants who report receiving injuries requiring medical attention as a result of excessive or unnecessary use of force by police.

This is often viewed as the most serious type of allegation my office has to deal with. It is to date the only type of complaint that my office has referred to the Crown for criminal investigation under Section 35 of the Act. We will continue to monitor and report on this situation.

- Winnipeg and Brandon continue to record the largest numbers of complaints. This is not surprising or unexpected, given their larger populations and urban environments where crime and police activity are more prevalent.
- Data on the dispositions of complaints after investigation continue to indicate that only a small number of complaints are dismissed by the Commissioner as outside the scope of the Act.

The most probable explanation for this finding is that current intake procedures work to eliminate this type of complaint early in the process.

- The increases in complaints dismissed by the Commissioner as frivolous or vexatious is not significant over the time period reported. However, this is another finding that we will continue to monitor and report on.
- There has been a significant increase in complaints dismissed by the Commissioner as unsupported by the evidence. This finding is most likely due to our increasing familiarity and experience with the legislation and investigative processes. It may also reflect the quality and thoroughness of investigations conducted by L.E.R.A. investigators.
- A large number of dispositions after investigation involve complaints that are either abandoned or withdrawn by complainants. Some reasons for this are:

(i) During the course of an investigation, it may become apparent that there is insufficient evidence to support the complaint, or that the complaint is frivolous or vexatious. This sometimes results in complainants abandoning or withdrawing their complaints.

(ii) Complainants are sometimes satisfied simply by having their concerns looked into and investigated. For these people, simply having their concerns taken seriously is enough. They seem satisfied when we make their concerns known to the officers involved and simply let the matter go without requesting any further action.

(iii) Some complainants are transient and move about without contacting LERA, or without leaving forwarding addresses. When attempts to contact these complainants are unsuccessful, their files are closed as abandoned.

- The data indicate that fewer complaints are being resolved informally over the time reported. The reasons for this are not clear at this time. We will continue to monitor this situation, and will attempt to provide some explanation for this finding in future reports.
- The data continue to show that the majority of complaints are being resolved by means other than referral to a public hearing before a provincial court judge.

There are several explanations for this finding;

(i) Under the amended legislation, most cases are successfully adjudicated and resolved by the Commissioner.

(ii) Some complainants are satisfied with the results of the investigation into their complaints, and the fact that the officers involved have been made aware of their concerns. These complainants simply do not want any further action taken.

(iii) Most complainants are not represented by counsel, and many decline to proceed to a public hearing before a judge simply because they are not represented, and do not feel confident enough to present their case when opposed by experienced counsel on the respondent's side.

- The one complaint that went to a hearing in 1994 involved an allegation of improper use of a firearm by the respondent officer. That complaint was dismissed by the Judge as witnesses to the incident were not available because they were in a witness-protection program as a result of an entirely unrelated matter.
- As can be seen from the data, admissions of guilt by respondent officers are rare. This is understandable, given that most respondents deny the allegations made against them. It is a rare situation indeed when the evidence against a respondent officer is unquestionable.
- All decisions by the Commissioner to dismiss complaints are appealable to the Provincial Court. These appeals are arranged by LERA at no cost to the appellant. Appeals to higher courts are rare but do occur from time to time.
- The number of appeals is small, and the Commissioner's decisions have been upheld by the courts in all cases to date. However, this finding may also be affected by the fact that appellants are rarely represented by counsel, while the appeal is always contested by counsel for the respondent.
- The absence of criminal charges in any of the cases referred to the Crown causes some concern. It may be that there is some imbalance in this present process. This is an issue my office will continue to monitor and report on.

Conclusion

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

There are a few areas of emerging concern, such as indications of misapplication in the use of pepper spray, increasing complaints alleging excessive use of force resulting in injuries to arrestees, a lack of prosecutions in any of the more serious cases referred to the Crown, a growing backlog in cases under investigation, inadequate resources to deal with emerging issues. These are issues my office will continue to monitor and report on.

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

While this is a good record, and deservedly so, it is important to keep in mind that individual and systemic problems do exist, and troubling incidents do occur from time to time. Without continued attention by everyone involved, problems that are present and situations that occur could, and most likely would, escalate. The prompt, effective, and efficient handling of public complaints alleging police misconduct is clearly a situation where an ounce of prevention is well worth its pound of cure.

Acknowledgments

LERA could not function without the cooperation and assistance of the Municipal Police Chiefs and their executives, the police associations, and members of the various police services operating in the province. Their acceptance and support of the public's right to have their grievances heard by an independent, nonpolice agency such as LERA make this process possible.

Special recognition should be accorded to members of the public, and respondent officers who are able to acknowledge and resolve their differences in an open and informal manner, then put these differences behind them, and move on with life.

Under the present organizational structure within the Department of Justice, LERA as an agency has no staff of its own. However, the role of Commissioner, which can often be difficult and challenging, would be impossible without the part-time assistance and support of staff in the Law Enforcement Services Branch, and many others involved in this process.

I would like to pay special recognition to Judie Roberts who, along with her other duties in Law Enforcement Services, provided principal clerical support for LERA Day in day out, week after week, year after year, Judie puts forth a seemingly endless effort, which may not be fully rewarded, but is greatly appreciated.

Michele Dupuis, Carol Stoik, Dixie Walters and Jodie Cahoon also provided much-needed support whenever they could. Their always-cheerful assistance and support is recognized and much appreciated.

Along with their other duties in Law Enforcement Services, Gerald Ferguson and Ian Macdonald conducted many investigations for LERA. Mr. Ferguson assumed the senior investigator's role after Del Hanson retired. Without their capable assistance in conducting these investigations, my job as Commissioner would have been impossible.

Neville Shende Q.C., Deputy Director of Civil Legal Services, provided solid legal counsel and sound advice. Neville is the person I most often turn to in complex and difficult cases, or when I am the one needing counsel. He has never let me down.

The production of this annual report would not have been possible without the efforts of Rhodel Dunn. Ms Dunn is a third-year law student employed as a STEP student for the summer of 1997. Her principal duties were to assist in the production of this, and other long-overdue annual reports. My thanks go to her for a good job well done, and to Wyman Sangster, Director of the Public Safety Branch, for arranging and providing this much-needed assistance.

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

Norman C. Ralph, BA, MPA
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