

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

**Annual Report
2016**



Law Enforcement Review Agency
General Inquiries:
420-155 Carlton Street Winnipeg, MB R3C 3H8
Phone: 204-945-8667
Manitoba Toll Free: 1-800-282-8069
Fax: 204-948-1014
Email: lera@gov.mb.ca

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<http://www.gov.mb.ca/justice/lera/annualreport/index.html>

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ATTORNEY GENERAL
MINISTER OF JUSTICE

Room 104
Legislative Building
Winnipeg, Manitoba CANADA
R3C 0V8

The Honourable Janice C. Filmon, 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 *2016 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, 2016.

Respectfully submitted,

"original signed by"

Honourable Heather ~~Stef~~anson





Justice

Law Enforcement Review Agency (LERA)
420 – 155 Carlton Street, Winnipeg Manitoba R3C 3H8
T 204 945-8667 F 204 948-1014
www.gov.mb.ca/justice/lera

The Honourable Heather Stefanson
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 31st annual report for the period of January 1, 2016, to December 31, 2016.

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,

"original signed by"

M.E. (Max) Churley
Commissioner



Justice

Organisme chargé des enquêtes sur l'application de la loi
155, rue Carlton, bureau 420, Winnipeg (Manitoba) R3C 3H8
Tél. : 204 945-8667 Téléc. : 204 948-1014
www.gov.mb.ca/justice/lera

Madame Heather Stefanson
Ministre de la Justice
Procureure générale

Madame la Ministre,

Conformément à l'article 45 de la Loi sur les enquêtes relatives à l'application de la loi, j'ai le plaisir de vous présenter le 31^e rapport annuel de l'Organisme chargé des enquêtes sur l'application de la loi, correspondant à la période allant du 1^{er} janvier au 31 décembre 2016.

Ce rapport fournit des statistiques sur le nombre et la nature des plaintes reçues par l'Organisme chargé des enquêtes sur l'application de la loi et décrit le processus de dépôt des plaintes ainsi que le mandat de l'organisme. À titre de renseignement complémentaire, j'ai joint un résumé de diverses causes afin d'illustrer le processus grâce à des scénarios réels.

La Loi sur les enquêtes relatives à l'application de la loi vise à :

- favoriser une éthique professionnelle de haute qualité parmi les agents de police au Manitoba;
- garantir à tous les résidents du Manitoba que leurs plaintes éventuelles contre des agents de police municipale en fonction feront l'objet d'une enquête et d'un examen indépendants;
- fournir un mécanisme de règlement des plaintes équitable aussi bien pour les plaignants que pour les agents de police défendeurs;
- faire en sorte que le comportement des agents de police respecte la primauté du droit et les principes d'une société ouverte et démocratique.

Je vous prie d'agréer, Madame la Ministre, mes salutations distinguées.

Le commissaire,

“original signed by”

M. E. (Max) Churley

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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 Civilian Review and Complaints Commission for the RCMP (CRCC) at www.crcc-ccetp.gc.ca or by calling 1-800-665-6878 (toll free). If LERA receives complaints about members of the RCMP, LERA will forward them to the CRCC.

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 *Law Enforcement Review Act* applies to the conduct of police officers from other provinces or territories who have been appointed as police officers in Manitoba pursuant to *The Cross Border Policing Act*.

What does LERA investigate?

LERA investigates allegations from the public that on duty municipal or local police officers have committed any of the following actions as outlined in Section 29(a) of the *Act*:

- 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. A complainant may ask LERA staff or members of the local police service to help prepare their 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 legal counsel provided under their employment contract or collective agreement.

How is a complaint resolved?

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, Community Safety 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

Website: www.gov.mb.ca/justice/lera

Website Overview – 2016

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

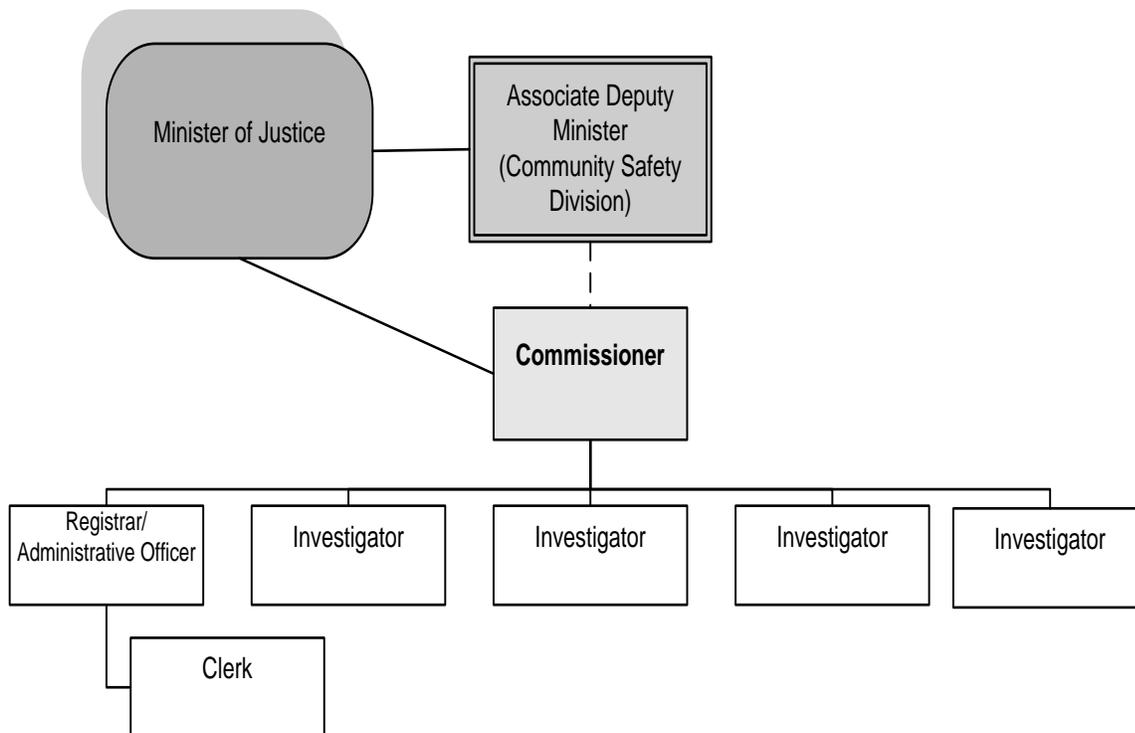
Organizational Structure

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 the Associate Deputy Minister of the Community Safety Division.

LERA's budget for the financial year beginning April 1, 2016 and ending March 31, 2017 is:

Full Time Employees	4
(filled positions)	
Total Salaries (\$000`s).....	\$326
Total Operating Budget (\$000`s).....	<u>\$ 61</u>
TOTAL	\$387



Activities

During the year, the commissioner and/or staff:

- participated in meetings with the Executive Director of Policing Services and Public Safety, Community Safety 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*
- attended graduation ceremonies for Winnipeg Police Service recruit classes
- completed Manitoba Organization and Staff Development Comptrollership Framework online Learning Program E-Modules
- met with Communications staff assigned to Justice
- presented to Winnipeg Police Service recruit and cadet classes on *The Law Enforcement Review Act*
- Participated as a member of the CACOLE Board of Directors in several board meetings and planning meetings via teleconferencing
- Participated via teleconferencing at a meeting hosted by the Civilian Review and Complaints Commission for the Royal Canadian Mounted Police (RCMP)
- 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 Legal Services Branch
- met with Chief and Inspector, Brandon Police Service
- met with Director, Independent Investigation Unit
- met with Program Manager of Main Street Project
- presented to the Brandon Police Service students
- presentation at Assiniboine Community College, Brandon
- attended the 15th Annual Keep the Fires Burning, Ka Ni Kanichihk
- completion of Strategic Staffing Skills: Foundations online course

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
- the province's Information Systems Branch for maintenance of LERA's computerized data system
- the many other stakeholders involved in the LERA process

Activités

Au cours de l'année, le commissaire ou le personnel :

- ont participé à des réunions avec le directeur général du maintien de l'ordre et de la sécurité publique de la Division de la sécurité communautaire;
- ont participé à des réunions et à des discussions avec des cadres de la police, des associations de policiers, des membres de services de police et des fonctionnaires municipaux;
- ont assisté à la révision de décisions du commissaire et à des audiences publiques présidées par un juge de la Cour provinciale siégeant en qualité de *personne désignée*;
- ont assisté à la cérémonie de remise des diplômes des classes de recrues du Service de police de Winnipeg;
- ont suivi les modules électroniques d'apprentissage en ligne portant sur le cadre de contrôle offert par la Direction du perfectionnement et de la formation du gouvernement du Manitoba;
- ont rencontré des employés du service des communications affectés au ministère de la Justice;
- ont présenté des exposés sur la Loi sur les enquêtes relatives à l'application de la loi devant des classes de recrues et de cadets du Service de police de Winnipeg;
- ont participé, en qualité de membres du conseil d'administration de l'Association canadienne de surveillance civile du maintien de l'ordre (ACSCMO), à plusieurs réunions du conseil et réunions de planification, cela par téléconférence;
- ont participé, par téléconférence, à une réunion tenue par la Commission civile d'examen et de traitement des plaintes relatives à la Gendarmerie royale du Canada (GRC);
- ont rencontré l'inspecteur de l'unité des normes professionnelles du Service de police de Winnipeg;
- ont envoyé par courriel à tous les services de police du Manitoba les décisions de la Cour provinciale portant sur les causes visées par l'Organisme chargé des enquêtes sur l'application de la loi;
- ont rencontré le directeur général de la Commission de police du Manitoba;
- ont rencontré des représentants de la Direction des services juridiques;
- ont rencontré le chef et un inspecteur du Service de police de Brandon;
- ont rencontré le directeur de l'Unité d'enquête indépendante;
- ont rencontré la personne responsable des programmes du Main Street Project;
- ont présenté un exposé devant les étudiants du Service de police de Brandon;
- ont présenté un exposé au Collège communautaire Assiniboine de Brandon;
- ont assisté à la 15^e édition annuelle de l'activité « Keep the Fires Burning » de Kani Kanichihk Inc.;
- ont suivi une formation en ligne sur les principes de base de la dotation stratégique.

Remerciements

- aux membres du public qui font part de leurs plaintes et de leurs préoccupations à l'Organisme chargé des enquêtes sur l'application de la loi;
- aux plaignants et aux défendeurs qui parviennent à régler leurs différends à l'amiable;
- aux chefs des services de police municipaux du Manitoba;
- aux associations de policiers et aux membres des services de police municipaux du Manitoba;
- aux avocats qui aident les plaignants et les défendeurs;
- aux fonctionnaires de Justice Manitoba pour leur aide et leur expertise;
- au personnel de l'Organisme chargé des enquêtes sur l'application de la loi dont la compétence et l'engagement sont essentiels à la réussite de l'organisme;
- à la Direction des systèmes d'information du gouvernement du Manitoba pour avoir assuré la maintenance du système de traitement des données informatiques de l'Organisme;
- aux nombreux autres intervenants qui participent au processus de l'Organisme.

Commissioner's Decision to Take No Further Action

When LERA receives a complaint, the commissioner assigns a staff investigator to investigate. 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 prospect 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.

Provincial Court 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 Court Judge. Section 13(2) of The Law Enforcement Review Act (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.

The following are two samples of when the commissioner; 1) decided to take no further action; and 2) application was made in both cases, for a review by a Provincial Court Judge.

- An adult male, hereinafter referred to as the complainant, was experiencing a migraine headache and decided to see his physician. He was experiencing vision problems thus felt incapable of driving, so he rode his bicycle to the doctor's office. While returning home, riding down a bicycle/walking trail, he became aware of the presence of a police officer as a siren sounded. In his complaint to LERA he identified a specific point on the trail where this occurred. He saw the front left side of a police car next to him as he continued eastbound. Seconds later, the officer and sole occupant of the vehicle, reached out the driver's window and grabbed the right side of his sweater as he still operated the police vehicle.

The officer without saying anything pulled him toward the police car causing him to stop with the bicycle falling to the ground near the driver's door. He managed to brace his fall with his right leg and arm as he fell from the bike and was nearly run over by the police car. The complainant said to the officer, "what are you doing you stupid?" The officer could not

open the driver's door so he told the complainant to "back up." At this point the two were face to face and the complainant told the officer "let go of me and I'll move my bike so you can get out." The officer, visibly upset and shaking, released his hold on the sweater and got out of the car pushing the bike out of the way. He told the complainant that it was illegal to ride a bicycle on a sidewalk. The complainant said that he wasn't aware of that because he use to live in Calgary and it was legal there.

The officer indicated that he suspected the bicycle may be stolen; telling the complainant that he was being detained and to put his hands behind his back. The officer applied handcuffs and placed him in the back seat of the patrol car. While in the car and still handcuffed, the complainant said that the officer reached in and struck him on the side of the head with his right hand. His sunglasses came off and the officer threw them against the inside of the front passenger door.

The complainant said that the officer called him a loser and used some other "colourful terms" and made a seemingly derogatory comment about his teeth, although he couldn't recall exactly what was said and didn't know what it meant. The officer asked for his name, but he refused, telling him that he would provide only his name to the (officer's) superior. The complainant stuttered as he said "superior officer" and the officer mimicked him.

The complainant requested that the officer call for an ambulance four or five times, however, the officer refused to respond. He also told the officer that the handcuffs were unnecessarily tight and hurt his wrists. His right shoulder was sore, as was his lower back, aggravated by a previous unrelated injury. He told the officer he was a "dirty cop." The officer loaded his bike into the trunk of the police vehicle and backed off the trail to the nearby road.

Two other officers arrived and spoke with the first officer. The complainant identified himself to the newly arrived officers after being transferred into their car. The two officers took him to the local police office and left him in an interview room. Sometime later, the first officer entered the room and informed the complainant of the charges against him and said that he would be released. In the process of his release, while in the police station garage, the first officer poked him in the chest and said, "Stand back" because he had moved closer to the officer as he read the charges to him. The officer went on to tell him that he would "get hurt." He was unsure of what the officer meant but he (the complainant) didn't get any closer.

Following his release, he walked into the front of the police station and enquired as to how he would go about registering a complaint against the officer. The complainant called his daughter who picked him up and took him to the hospital for treatment.

LERA conducted an investigation which included a review of the medical and police reports and an interview with the officer(s) involved.

The officer involved, advised that when stopping the cyclist (complainant), based on the complainant's actions and gestures directed toward him, he was confident that the complainant knew he had been directed to stop. The officer explained that by grasping the complaint as he did, he tried to gain control of him to stop. He said the complainant did not fall down or fall against the police vehicle. He denied striking the complainant, making comments about his

teeth or using colorful terms to describe him. The officer admitted that he did ask the complainant why he was “riding like an idiot.”

The officer also denied that he poked the complainant in the chest with his finger, but said that he pointed at him telling him to stand back (from the officer), or he would consider the complainants actions to be physically aggressive and would defend himself. The officer said that the complainant didn't request, nor did he appear to require medical attention.

On completion of the investigation, the commissioner found there was insufficient evidence to justify referral to a public hearing and declined to take further action.

DECISION: The complainant asked to have a Provincial Court Judge (PCJ) review the commissioner's decision. The judge, having reviewed materials filed with the court and upon hearing submissions from the complainant, counsel for the officers and counsel for the commissioner, requested that the commissioner obtain and provide additional information for the court. The information was collected by the commissioner and at a later date the review recommenced. The LERA investigator had recorded a short video of the area where the incident occurred, which the complainant had not viewed. The review was again set over to allow for the viewing of the video. Upon continuing, the complainant and participating counsels were given the opportunity to make additional submissions and the matter was adjourned for the judge to prepare his written decision. Prior to the submission of his decision, the judge resigned from the bench. A new judge was assigned; he reviewed all of the material entered into evidence and afforded the complainant and participating counsels to again make additional submissions. The judge found that the commissioner had not erred by taking no further action.

- An adult male, hereinafter referred to as the complainant, when driving down one avenue turned onto a second. The intersection was under repair and the complainant said that he had to drive slowly to avoid damaging his car. As he proceeded, he heard a siren behind him and his immediate reaction was to make way for the emergency vehicle to pass. He said he slowed almost to a complete stop, as he pulled in to the first available spot, which was when he realized that it was him the police wanted to stop. When asked, he produced his driver's licence and registration and waited as the officer went back to his vehicle. He was charged under Section 132 of *The Highway Traffic Act* (HTA) for failing to pull over to the curb when an emergency vehicle approached.

When handed the ticket he was shocked asking the officer if he was, in fact, giving him a ticket and the officer said yes. He asked the officer why and was told that he had stopped on the wrong side of the street. He indicated to the officer, that it was the only available place to stop to let the police car go by. He said the officer told him that this was not the place to argue and that he should go argue with the judge. The officer, according to the complainant, at no time told him why he was pulling him over in the first place. The complainant was adamant that he did not commit an offence and complained that he was charged because of his race (racial profiling). The complainant told the LERA investigator that the officer didn't make any

derogatory remarks about his race, where he was born or his citizenship. There was a second officer in the passenger seat of the police car who didn't get out of the vehicle or have any contact with him. He also thought that the officer may have thought he was a Muslim and may harbour a "heightened sense of duty" when dealing with Muslims. The complainant was of the opinion that the fact he was stopped is, in itself, evidence of racial profiling.

An investigation was conducted which included a review of police documentation and interviews with the officers involved. The following information was obtained from these sources.

The officers were westbound in lane one with lights and sirens activated. The LERA complainant was in lane 1, with the traffic in lanes 2 and 3 pulling over to the right. The complainant jammed on his brakes so hard that when the officer driving the police vehicle slammed on his brakes, the seat belts locked in place as a result of the change in velocity. The complainant pulled over and came to full stop in lane 1 before pulling a half lane over into construction blocking the forward path of the police car. The officers stated that the identity, appearance or nationality was unknown to them prior to actually stopping him and they firmly denied that racism had anything to do with their decision to charge him.

On completion of the investigation, the commissioner found there was insufficient evidence to justify referral to a public hearing and declined to take further action.

DECISION: The complainant asked to have a Provincial Court Judge (PCJ) review the commissioner's decision. After hearing from the complainant, the judge found that the commissioner's decision was rational and he had not erred by taking no further action. The application was dismissed.

* * * * *

Public Hearings before a Provincial Court Judge

Public hearings under The Law Enforcement Review Act (the Act) are held before Provincial Court 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 Court 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 Court Judges have held that the “clear and convincing evidence” standard falls between the civil and criminal standards of proof.

The following is a sample case where the commissioner decided to refer the matter to a public hearing before a Provincial Court Judge.

- This is an unusual case in that the matter was referred to a Section 17 Hearing under *The Law Enforcement Review Act (the Act)*, but the respondent officer retired prior to the proceedings. The officer exercised his right not to attend the hearing, so it proceeded in his absence. Therefore, the decision of the Provincial Court Judge was based solely on the evidence of the complainant. The complainant alleged that the respondent officer abused his authority by: 1) making an arrest without reasonable and probable grounds; and 2) using unnecessary violence or excessive force.

The complainant, a male school teacher, was riding his bicycle from home to school on a Friday morning. He was an experienced rider, wearing typical riding gear, including riding shoes clipped into the pedals.

As he rode southbound approaching an intersection he felt was dangerous in rush hour traffic, he decided to ride briefly on the sidewalk. After crossing the intersection on a green light and approaching a back lane, he heard someone scream out “Hey”.

The complainant said, he looked to his left and saw a uniformed police officer on a mountain bike, pedalling hard to go around him near the back lane. He said he stopped and unclipped his left shoe for balance and the police officer “got very close, within about a foot” and told him that it was illegal to ride on a sidewalk. The complainant advised the officer that riding a bike near that intersection was dangerous.

After a brief discussion, he said that the officer said “Give me your ID, you’re going to get a ticket”. He described this request as strange because often when riding his bike he doesn’t carry his ID with him. He told the officer that he didn’t think he had to give him his ID and the officer replied that this would go a lot easier for him if he just gave him his ID, a comment that the complainant believed had ominous overtones. He repeated his position to the officer that he didn’t think he had to produce his ID and the officer replied, “I’m gonna throw you against that tree and search you for ID,” or “I’m gonna throw you against that tree and arrest you”.

At this point, the complainant said that he took his cell phone from his pocket and stated that he is a teacher just down the street and that he needs to call and advise that a substitute would be required. He said that the officer told him that he can’t do that and punched his hand with a closed fist, knocking the cell phone from his hand and onto the ground. The teacher, said he instinctively moved to pick up his phone and the officer placed him in an arm bar behind his back and forcibly pushed him to the ground, while still straddling his bicycle with one foot still clipped into the pedal. He said he was virtually bent in half with the officer’s weight on his body, and his arm being twisted painfully upward toward his head.

The complainant, within seconds of this happening heard a woman asking “Can I help you” and said that he replied by saying, “yes” and the officer replied by saying “Call 911”. According to the complainant, he was then handcuffed behind his back and more officers arrived and one of them rolled him onto his side and went through his backpack and pockets, and took out his wallet. He said a different officer threw down tickets near his head and said “Take it or not”.

Eventually, he said he was raised to his feet and the handcuffs were removed. He removed his backpack, put his lunch and his clothes back into his backpack and got on his bike and went to school. The teacher said that he was asked for his identification but never for his name, date of birth, and address.

The complainant did not dispute that he committed an infraction by riding his bicycle on the sidewalk nor that the officer had the authority to issue a Provincial Offence Notice (PON) (ticket) for that infraction. He did take issue with the authority of the officer to arrest him for that infraction.

The commissioner found that there was sufficient evidence to justify referring the matter to a hearing before a Provincial Court Judge on two defaults, as follows:

- Abuse his authority by making an arrest without reasonable or probable grounds, contrary to subsection 29(a)(i) of *The Law Enforcement Review Act*; and
- Abuse his authority by using unnecessary violence or excessive force, contrary to subsection 29(a) (ii) of *The Law Enforcement Review Act*.

In the absence of the officer at the hearing, the judge made his decision based on the evidence provided by the complainant. The complainant said in his testimony that he was threatened with arrest, however, he didn’t say that he was told that he was under arrest. However, based on the evidence that he was forced to the ground, placed in an arm bar, handcuffed behind his back and searched, while he may not have been formally arrested, he clearly was under de facto arrest.

Following some comments on the definition of bicycle, vehicle and driver, the judge found that the complainant as the driver of a bicycle was required to provide his name, date of birth and address to the officer. However, there was no requirement for him to “produce his or her licence, the vehicle’s insurance certificate or registration card (because there are none for a bicycle) or any other document respecting the vehicle. All that is required of the “driver” of a bicycle is name, date of birth and address, none of which requires production of what we would traditionally consider as “identification, identification papers or identification documents”.

The judge went on to discuss the authority to arrest a person in given circumstances and in the end found that the Respondent Officer had no legal authority to arrest the complainant for riding his bicycle on the sidewalk.

DECISION: The judge was satisfied on clear and convincing evidence that the officer abused his authority by effectively arresting (the complainant) without lawful authority, that is, without reasonable and probable grounds to do so. He found that the officer committed a disciplinary default within the meaning of section 29 of the Act.

The judge was also satisfied on clear and convincing evidence that (the officer) abused his authority by using unnecessary violence and excessive force, and thereby committed a disciplinary default.

There was no disciplinary action ordered against the officer because he had since retired. However, in the event the officer should apply to again become a peace officer, the finding under *the Act* can be raised during the application process.

* * * * *

See heading “Criminal Charges” for a case initially referred to the Attorney-General for possible laying of criminal charges. It was later referred to the Chief Judge of the Provincial Court for a hearing under Section 17 of *the Act*.

Out of Scope

LERA is mandated under The Law Enforcement Review Act (the Act) to investigate public complaints of disciplinary defaults by police officers as defined in Section 29, the discipline code. LERA does not investigate criminal or service issues. From time to time complaints are received about police action that is not subject to investigation by the agency.

The following is a sample where the commissioner decided no further action was required as the matter was outside the scope of *the Act*.

- An adult male, hereinafter referred to as the complainant, reported that over the previous few years the same officer charged him four times for the same offence; not having a front plate on his Jaguar. The complainant acknowledged that he was aware the plate was required and that he should have the plate installed. He was however, of the opinion that the officer had made it his “personal mission to find me and ticket me.”

The complainant further advised that when first charged, the officer told him that if he corrected the problem before the due date on the ticket, the ticket would likely be waived. However, before the due date, the officer pulled him over again charging him for the same offence. At that time he explained that he didn't have the plate with him, but provided evidence that he was arranging to have it attached. The complainant took both tickets to a Magistrate and both tickets were “waived.”

Two months previous to making his complaint to LERA, the complainant was driving his new Jaguar without a front licence plate and he was stopped again by the same officer. There was a “spirited” conversation with both the complainant and the officer losing their tempers. A ticket was issued by a second officer, apparently to avoid further conflict. The complainant later paid the fine related to that incident. At a later date, the same officer stopped and charged the complainant for the same offence.

The LERA investigator obtained court records confirming the complainant had been charged at least four times by the same officer for the same offence. On the first two charges he was reprimanded by a Magistrate and on the third offence was assessed a fine of \$113.10. The fourth charge had not yet been disposed of.

The commissioner considered if the actions of the officer amounted to harassment as alluded to by the complainant, or maybe even discrimination. Either or both would certainly come to mind, if for example, the officer stopped and charged the complainant on four occasions within a short time frame, but only after closely scrutinizing the complainants documents, vehicle equipment, etc. and eventually coming up with some reason to issue a ticket. However, in this case, on each occasion, the complainant's vehicle was not displaying a front licence plate, an offence, quite obvious to the officer from his patrol car. Therefore, the issue for consideration is the manner in which the police service chooses to address the enforcement of a specific section of *The Highway Traffic Act* when dealing with a person who refuses to comply.

DECISION: The main concern of the complainant was being stopped and charged, on four separate occasions, for failing to display a front licence plate on two vehicles he was operating. The commissioner declined to take further action as the complaint was not within the scope of The Law Enforcement Review Act. The complainant was advised to direct his concerns to the appropriate authority, the Chief of Police.

* * * * *

Frivolous or Vexatious

Clause 13(1)(a) of *The Law Enforcement Review Act (the Act)* provides that the commissioner must decline to take further action on a complaint if satisfied that the subject matter of a complaint is, among other things, “frivolous or vexatious”.

Frequently, the terms “frivolous” and “vexatious” are used interchangeably, or both terms are used in tandem. However, the syntax of the phrase does not necessarily require that the subject matter of a complaint be both frivolous and vexatious at the same time. Rather, if the meaning of either one or the other of the two terms is met, the commissioner must decline from taking action on the complaint.

The definition of vexatious used in a human rights proceeding **Potocnik v. Thunder Bay (City) (No. 5)** (1997), 29 C.H.R.R. D/512 (Ont. Bd. Inquiry). The board held, in part, that:

“A vexatious complaint is one that aims to harass, annoy, or drain the resources of the person complained against. A complaint made in bad faith is one pursued for improper reasons – a vexatious complaint is an example of one made in bad faith.”

The following is an example of when the commissioner decided to take no further action on a complaint that was found to be vexatious.

- A male, hereinafter referred to as the complainant, reported that when driving his vehicle, he was pulled over and arrested by officers. He said he was pulled out, slammed on the car and grabbed by the jaw with the officers being fully aware that his jaw was surgically wired. The officers, according to the complainant, tossed him back and forth between each other as if throwing a ball.

Investigation revealed that the complainant was arrested when he was caught by security officers breaking into a building under their care. The security officers called police who attended and took custody of the complainant inside the building. As it turned out and unknown to the complainant, the building had four operational security cameras and the videos, which caught the entire incident, were accessed by LERA and found to clearly show the complainant’s allegations to be untrue.

DECISION: The commissioner found the complaint to be vexatious as it was clearly fabricated and made in bad faith and declined to take further action.

Abandoned or Withdrawn

- The police obtained search warrants on two occasions for the residence of an adult male, hereinafter referred to as the complainant, believed to be involved in criminal activity. Numerous items were seized including firearms, some of which were antique. Following the searches, the complainant inspected the seized property and claimed that several of the guns had been damaged and that there was gold jewellery missing from his residence that he alleged the police had taken.

The police provided LERA with a copy of their file. Also provided were photographs taken of the items/firearms as they were found in the residence, in some cases among piles of other items; clearly not stored as required under Canadian firearms legislation or in a manner that would protect them from damage.

The complainant was informed that the allegation of theft of jewellery is a criminal offence which should also be reported to the police for investigation. Many of the firearms seized had damage ranging from scratches to broken parts, so the complainant was asked to identify specific damage(s) to specific firearms caused by the officers. Additionally, a description of the missing pieces of jewellery was requested along with information as to where each piece was purchased/obtained, approximate value and photographs and receipts if available.

The complainant failed to provide the requested information following repeated attempts through correspondence and telephone calls and messages. On two occasions, the investigator visited his residence; however it appeared that he wasn't at home. On both occasions business cards and notes were left in the mail box and on his door. Neighbours confirmed with the investigator that the complainant did in fact reside at that location. Eventually, a letter was forwarded to the complainant, advising that the file would be closed if he failed to contact LERA within thirty days. No contact was made so a registered letter was forwarded confirming that the file was now closed as abandoned. Shortly thereafter, the complainant responded by protesting the closing and requesting a review of the commissioner's decision before a Provincial Court Judge.

A review was held before a Provincial Court Judge which included submissions from the complainant and legal counsel for the police service.

DECISION: The Provincial Court Judge found that the investigator was actively involved in trying to investigate the complaint. In his view, there were consistent efforts made over an extended period of time to pursue the matter and obtain relevant information. He found that, the commissioner made a rational decision in concluding that the complainant no longer wished to pursue the matter, after months of attempting to collect the needed information. The application was dismissed.

* * * * *

Criminal Charges

Some complaints of misconduct by an officer(s) may fall under Section 29 of The Law Enforcement Review Act (the Act) and also be criminal in nature. A complainant may file complaints resulting from the same incident, with both LERA and the police service of jurisdiction. In such instances the criminal process always takes precedence over the LERA investigation. Additionally, under Section 35(1) of the Act, the commissioner or a Provincial Court Judge must report a matter to the Attorney-General for the possible laying of charges when there is evidence disclosed that a police officer may have committed a criminal offence.

Disclosure of possible criminal offence

35(1) *Where a matter before the commissioner or a Provincial Court Judge discloses evidence that a member or an extra-provincial police officer may have committed a criminal offence, the commissioner or the Provincial Court Judge shall report the possible criminal offence to the Attorney-General and shall forward all relevant material, except privileged material, to the Attorney-General for the possible laying of charges.*

If an officer(s) is charged criminally and the charge(s) is disposed on its merits in criminal court, LERA loses jurisdiction to take further action under the Law Enforcement Review Act (the Act).

Effect of criminal charge

34 *Where a member or an extra-provincial police officer has been charged with a criminal offence, there shall be no investigation, review, hearing or disciplinary action under this Act in respect of the conduct which constitutes the alleged criminal offence unless a stay of proceedings is entered on the charge or the charge is otherwise not disposed of on its merits.*

The following is a sample case where the commissioner referred a matter to the Attorney-General for the possible laying of charges. Following the completion of the criminal process, the commissioner decided to refer the matter to a public hearing before a Provincial Court Judge.

- The complainant in this matter is an adult male, hereinafter referred to as “the complainant”. He owned and resided in a house along with a border friend, another male, hereinafter referred to as “Paul”. At approximately 2:30 AM, Paul’s ex-girlfriend, hereinafter referred to as “Susan”, arrived at the residence with her daughter fathered by Paul. Susan, who appeared intoxicated, wanted to leave the infant with Paul. Paul, fearing that Susan was in no condition to care for the infant, took her and Susan departed heading to a party on foot. Paul, the complainant and the complainant’s girl friend, hereinafter called “Mary”, made a bed for the baby in Paul’s room and everyone at the residence went back to bed.

Approximately 5 hours later, Susan returned to the residence intending to pick up the infant, however, it appeared that she was even more intoxicated then earlier so they refused to let her take the baby. The complainant didn’t want Susan staying in the house, however, Paul allowed her to sleep in his room to sober up and again everyone went back to bed.

At approximately noon, the complainant was outside the residence chatting with a neighbour, when Mary advised him that Susan and Paul were awake and arguing or fighting in Paul's bedroom. The complainant went inside and Paul told him that Susan had assaulted him. Paul had bumps on his forehead allegedly resulting from Susan's punches. The complainant told Susan to leave or he would call the police, to which she replied that she had already called the police. The complainant was not concerned about the police attending his residence because it involved Paul and Susan and had nothing to do with him. The complainant thought the police would attend, take Susan into custody, thus removing her from the residence, which is all he wanted.

Shortly thereafter, Constable "No. 1" and Constable "No. 2" arrived and spoke with Paul near the front steps of the residence. The complainant went to the steps and then walked back into the residence followed by an officer. The complainant pointed out the bedroom where Susan and the infant could be found and he then went to have a shower.

Once showered, the complainant returned to the front steps and heard Paul tell Constable No. 1 that Susan had assaulted him. Constable No. 2, according to the complainant, was at this time standing, leaning against a fence and the complainant asked Constable No. 2 if he wanted to know what the complainant knew about the alleged assault. Constable No. 2 replied, "You're pretty stupid not getting rid of the drugs in the house before calling the cops." The complainant said that he didn't have any drugs in the house and Constable No. 2 told him, "I did you a favour and wiped it off your table for you." The complainant then told Constable No. 2 he should "talk to the junkie," meaning Susan. The complainant said the Constable No. 2 replied, "Ya that's what they all say."

The complainant walked away from the officer and while returning into the residence said to Constable No. 2 "obviously you don't want to talk to me, you don't want my statement." According to the complainant, Constable No. 2 then told him to "shut the fuck up." The complainant replied to Constable No. 2, while standing on his doorstep, "you shut the fuck up, who the fuck are you to tell me to shut the fuck up." The complainant said that Constable No. 2 ran to the bottom of the steps and replied, "What the fuck did you say?" to which the complainant replied "like I said, who the fuck are you to tell me to shut the fuck up."

The complainant alleged that Constable No. 1 ran up the stairs and pushed him in the chest and into an interior door of the residence. He said he hit the door, bouncing back into Constable No. 2's chest. He, the complainant, said his hands were raised in a defensive position when he was propelled forward into the officer's chest because of the force of bouncing off the door. He said that Constable No. 2 pushed his hands away, stepped back and told him, "that's assault."

The complainant said he turned around while trying to kneel on the ground when Constable No. 2 took hold of him and began to choke him while he yelled, "quit resisting." The complainant attempted to remove the officer's arm because he was choking him and he was having difficulty breathing. He said to the officer, "I'm not resisting, you're choking me." The two struggled for a moment as the officer continued choking the complainant until he was able to give his arms up and submit to the officer. The complainant alleges that after being handcuffed, Constable No. 2 applied force to his back and neck. The complainant said that Mary witnessed the altercation and yelled at the officer that the complainant was not resisting. She went further to tell the officer that the complainant was recovering from a motor vehicle collision.

The complainant said that he was upset with Constable No. 2 and asked him if he was enjoying what he was doing. He said the officer moved his knee from his back to his neck and told the complainant that he was “a player.” The two men exchanged comments about whether or not they recognized each other from a previous contact. The complainant told Mary to call other officers to the residence and to record the incident on her phone video camera. Shortly thereafter, several other officers arrived. Constable No. 2 took the complainant to the police station and later released him from custody to appear in court at a later date.

After the complainant’s release from custody at 3:15 p.m., he went to the hospital for treatment of his alleged injuries. Documents obtained from the hospital indicate that the complainant did attend at the hospital making a complaint(s) that he had been injured by police as follows: 1) aggravation of some previously suffered injuries; 2) sore neck due to officer placing a knee against it and he was of the belief that it may have caused some nerve damage; 3) swelling and tenderness at the front of his neck; and 4) shooting pain in his left thumb. Examination of his spine indicated no significant injury. No serious injury was diagnosed but he advised that he was awaiting further surgery related to a previous motorcycle accident. He was experiencing numbness and tingling to face and the first two fingers of his left hand were very stiff. Diagnoses of soft tissue injury and directed to take Tylenol for pain, to rest, apply ice, compression and elevate affected areas.

The investigation conducted by LERA included: 1) the interview and taking of statements from all witnesses; 2) a review of the complainant’s medical history related to the alleged injuries; and 3) interviews of officers involved.

The officers when interviewed, along with their documentation of the incident in reports and hand written notes, was in contrast with the account provided by the complainant and witnesses; in short, they denied the allegations made.

The complainant was charged with assaulting a peace officer under Section 270(1) (a) of *The Criminal Code of Canada* but it was dismissed by the presiding Provincial Court Judge. In doing so, the judge made some comments having significance in the LERA investigation. The judge said:

But in considering the defence evidence and in my view, none of the defence witnesses appeared to be shaken in any way, in cross-examinations. The stories, compared to each other, do not dovetail completely and the Crown has overlaid and compared and contrasted each of the witnesses’ testimony, but in totality, I got the impression that none of the witnesses had colluded in any way, that they were not attempting to reconcile their evidence.

At this point the commissioner referred the matter to the Attorney-General for the possible laying of charges against the police officers. After their review the Attorney-General concluded that there was no reasonable likelihood of a conviction in prosecuting the officer for a criminal offence arising from his actions in response to this incident.

As no criminal charges were proceeded with against the officer, LERA retained jurisdiction over the matter. The commissioner, following a close review of all the information available, found that there was sufficient evidence to justify referring the

matter to a hearing before a Provincial Court Judge on three defaults, against Constable No. 2, as follows:

- Section 29 (a) (i) making an arrest without reasonable or probable grounds
- Section 29 (a) (ii) using unnecessary violence or excessive force
- Section 29 (a) (iii) using oppressive or abusive conduct or language

DECISION: The complainant failed to appear as required on two successive dates and the judge dismissed the matter.

Statistical Analysis

- LERA's jurisdiction extends to 11 police services with 1,665 police officers. Total population served is 821,173.
- Winnipeg Police Service accounts for 83 per cent of complaints made to LERA. Brandon Police Service accounts for 5 per cent and other services account for the remainder.
- There were 214 files opened in 2016, up by 3 complaints from 211 in 2015. The four year average is 219 new files per year.
- The number of formal complaints filed is 122, down 17 from 139 formal complaints in 2015.
- Ninety-two (92) complaints were resolved at intake or after preliminary enquiries, up from 72 in 2015.
- In 2016, there were 252 total investigations. There were 234 investigations in 2015.
- There were 126 investigations completed in 2016, up 34 from 92 in 2015.
- There were no complaints alleging the misuse of pepper spray in 2016.
- There were 4 complaints of misuse of the Taser in 2016.
- There were 5 incidents alleging misuse of handcuffs in 2016, down 5 from 10 in 2015.
- Incidents alleging injuries from the use of force decreased to 60, from 61 in 2015. Allegations of injuries were made in 49 per cent of complaints investigated.
- There were no informal resolutions of complaints in 2016, down from 1 in 2015. 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 decreased from 2015. 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 forwarded to the complainant confirming closing of the file. (See Table 9)
- Complainants' requests for judges to review the commissioner's decisions were up by 7 requests to 13 in 2016. The four (4) year average is 8. (See Table 11)

- LERA does not conduct criminal investigations. When a case shows evidence that a criminal offence may have been committed, the commissioner or Provincial Court Judge must report it to the Attorney-General for a criminal investigation.

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 2016, 13 criminal complaints were made after a LERA complaint was also filed. This was up 7 from 2015. (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. There was an increase from 7 months in 2015, to 9 months in 2016. (See Tables 15 and 16)

- The average age of all complainants was 25. The oldest complainant was 66 and the youngest was 13. (See Table 18)

Analyse statistique

- La compétence de l'Organisme chargé des enquêtes sur l'application de la loi s'étend à 11 services de police, ce qui représente 1 665 agents de police. Au total, l'Organisme sert 821 173 personnes.
- Un total de 83 % des plaintes déposées auprès de l'Organisme concernent le Service de police de Winnipeg, 5 % concernent le Service de police de Brandon et les autres services se partagent le reste.
- En 2016, l'Organisme a ouvert 214 dossiers, soit trois de plus qu'en 2015 (211). La moyenne annuelle des quatre dernières années s'élève à 219 nouveaux dossiers par année.
- Le nombre de plaintes officielles déposées a été de 122, soit 17 de moins qu'en 2015 (139).
- L'Organisme a pu régler 92 plaintes dès leur réception ou après une enquête préliminaire, comparativement à 72 en 2015.
- En 2016, il y a eu 252 enquêtes. Il y en a eu 234 en 2015.
- En 2016, 126 enquêtes ont été achevées, soit 34 de plus qu'en 2015 (92).
- En 2016, aucune plainte n'a été déposée concernant l'utilisation abusive de vaporisateur de poivre.
- Il y a eu quatre plaintes portant sur l'utilisation abusive du Taser en 2016.
- Il y a eu cinq incidents relatifs à une utilisation abusive des menottes en 2016, soit cinq de moins qu'en 2015 (10).
- Les allégations de blessures liées au recours à la force ont baissé, passant de 61 en 2015 à 60. Les allégations de blessures ont représenté 49 % des plaintes ayant fait l'objet d'une enquête.
- Il n'y a pas eu de résolutions informelles des plaintes en 2016, mais il y en avait eu une en 2015. L'Organisme continue de soutenir activement le mode substitutif de résolution des différends qui vise à rétablir l'harmonie sociale entre les parties, et il y participe dans la mesure du possible. Cette méthode de résolution demeure une priorité et les plaignants et les défendeurs sont encouragés à l'utiliser.
- Le pourcentage de plaintes abandonnées par les plaignants a diminué par rapport à 2015. Les enquêteurs de l'Organisme communiquent avec les plaignants une fois l'enquête terminée, mais avant qu'une lettre de décision finale soit rédigée. Dans bien des cas, les plaignants abandonnent leur plainte après avoir appris les résultats de l'enquête. Dans d'autres cas, quand un enquêteur de l'Organisme 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 au plaignant pour lui indiquer que le dossier a été clos. (Voir tableau 9)

- En 2016, 13 plaignants ont demandé la révision de la décision du commissaire par un juge, soit sept de plus que l'année précédente. La moyenne sur quatre ans est de huit. (Voir tableau 11)
- L'Organisme n'effectue aucune enquête criminelle. Lorsque, dans le cadre d'une affaire, des éléments de preuve laissent croire qu'une infraction criminelle a peut-être été commise, le commissaire ou le juge provincial doit le signaler au procureur général afin qu'une enquête criminelle soit entreprise.
- Le cas échéant, les enquêteurs de l'Organisme signalent au plaignant qu'il peut aussi déposer une plainte en vertu du Code criminel auprès du service de police concerné. En 2016, 13 plaintes criminelles ont été déposées après le dépôt d'une plainte auprès de l'Organisme. Ce nombre est en hausse de sept par rapport à 2015. (Voir les tableaux 12 et 13)
- Pendant qu'une enquête criminelle est menée contre un policier ou un plaignant, l'enquête de l'Organisme est suspendue. Le système judiciaire peut prendre des mois, voire des années, pour traiter les enquêtes criminelles et les comparutions devant les tribunaux qui y sont liées. Bien qu'indépendantes de la volonté de l'Organisme, ces interruptions allongent nettement le temps requis pour achever les enquêtes.
- L'Organisme s'efforce toujours de terminer les enquêtes dans un délai raisonnable, cela étant un de ses objectifs permanents. Ce délai est passé de sept mois en 2015 à neuf mois en 2016. (Voir les tableaux 15 et 16)
- L'âge moyen des plaignants était de 25 ans. Le plaignant le plus âgé avait 66 ans et le plus jeune avait 13 ans. (Voir tableau 18)

2016 Statistical Report – Data Tables

Table 1: Complaints – Listed by Police Service**	Police Officers **	Population ***	2016 (n=122)	2015 (n=139)	2014 (n=138)	2013 (n=117)	2012 (n=148)
Altona	8	4,212	0	1 (0.7%)	0	1 (1%)	0
Brandon	87	48,859	6 (5%)	4 (3%)	11 (8%)	14 (12%)	6 (4.1%)
Dakota Ojibway (DOPS)	29	17,968	4 (3%)	0	0	2 (2%)	0
Morden	15	8,668	1 (1%)	1 (0.7%)	1 (1%)	0	2 (1.4%)
Rivers	3	1,257	1 (1%)	0	0	0	0
Ste. Anne	5	2,114	1 (1%)	0	0	0	0
Winkler	18	12,591	1 (1%)	2 (1.4%)	2 (1.5%)	1 (1%)	2 (1.4%)
Winnipeg****	1,495	705,244	102 (83%)	128 (92%)	121 (87%)	94 (80%)	134 (90%)
RM of Cornwallis*	1	4,520	0	0	0	0	0
RM of Springfield*	3	15,342	0	0	0	0	1 (1%)
RM of Victoria Beach*	1	398	0	0	1 (1%)	0	0
Other	0	0	6 (5%)	3 (2.2%)	2 (1.5%)	4 (3%)	3 (2.1%)
Total	1,665	821,173	100%	100%	100%	100%	100%

* Supplementary police service – RCMP have primary responsibility

** Source: Executive Director, Policing Services and Public Safety - Manitoba Justice, and WPS

*** Source: Statistics Canada Census 2016 and Dakota Ojibway Police Service

**** LERA's jurisdiction includes members of the Winnipeg Police Service Auxiliary Cadet Program

Table 2: Public Complaints	2016	2015	2014	2013
Files Opened	214	211	237	216
Resolved at Intake	92	72	99	99
Formal Complaints Received	122	139	138	117

Public Complaints

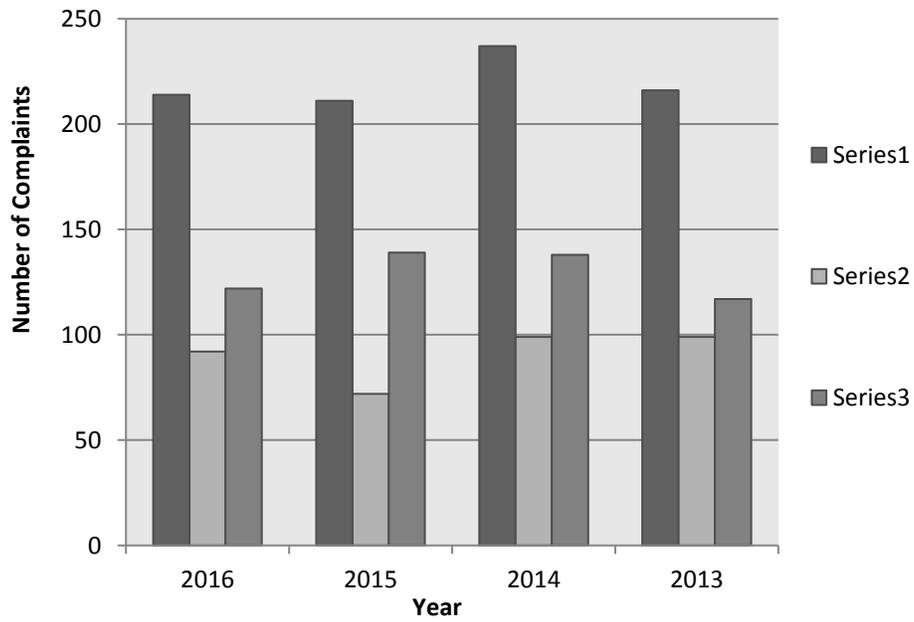


Table 3: Investigations Conducted	2016	2015	2014	2013
Total Investigations	252	234	225	216
Investigations Completed - Files Closed	122	92	132	128
Ongoing Investigations Carried Over as of December 31 st of the year shown	130	142	93	88

Investigations Conducted

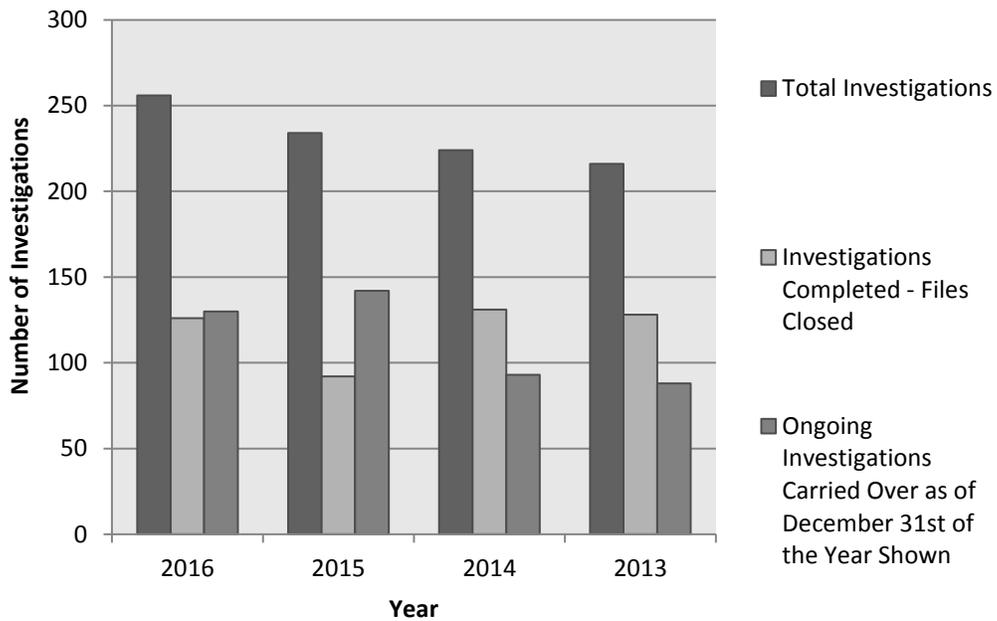


Table 4: Complainants' Allegations: Discipline Code Section 29 <i>The Law Enforcement Review Act</i>	2016	2015	2014	2013
Abuse of authority Subsection 29(a)	38	39	34	35
Arrest without reasonable or probable grounds Subsection 29(a)(i)	13	17	19	9
Using unnecessary or excessive force Subsection 29(a)(ii)	62	64	70	49
Using oppressive or abusive conduct or language Subsection 29(a)(iii)	31	47	40	28
Being discourteous or uncivil Subsection 29 (a)(iv)	40	52	49	42
Seeking improper personal advantage Subsection 29(a)(v)	0	1	2	0
Serving civil documents without proper authorization Subsection 29(a)(vi)	0	0	3	0
Differential treatment without cause Subsection 29(a)(vii) <i>The Human Rights Code</i> Subsection 9(2)	12	8	10	15
Making false statement(s) Subsection 29(b)	1	3	8	7
Improperly disclosing information Subsection 29(c)	3	2	1	3
Failing to exercise care or restraint in use of firearm Subsection 29(d)	0	0	1	0
Damaging property or failing to report damage Subsection 29(e)	4	4	4	6
Failing to provide assistance to person(s) in danger Subsection 29(f)	2	0	8	9
Violating person's privacy (under <i>The Privacy Act</i>) Subsection 29(g))	3	4	3	1
Contravening <i>The Law Enforcement Review Act</i> Subsection 29(h)	0	0	0	0
Assisting any person committing a disciplinary default Subsection 29(i)	0	0	0	0

Table 5: Incidents Alleging Misuse of Pepper Spray

2016 (n=0)	2015 (n=0)	2014 (n= 0)	2013 (n=0)
0% of 122 complaints investigated	0% of 139 complaints investigated	0% of 138 complaints investigated	0% of 117 complaints investigated

Table 6: Incidents Alleging Misuse of Handcuffs

2016 (n=5)	2015 (n=10)	2014 (n=4)	2013 (n=3)
4% of 122 complaints investigated Winnipeg PS = 4 Other = 1	7% of 139 complaints investigated Winnipeg PS = 10	3% of 138 complaints investigated Winnipeg PS = 3 Brandon PS = 1	3% of 117 complaints investigated Winnipeg PS = 3

Table 7: Incidents Alleging Misuse of Taser

2016 (n=4)	2015 (n=0)	2014 (n=1)	2013 (n=3)
3% of 122 complaints investigated Winnipeg PS = 3 Dakota Ojibway PS = 1	0% of 139 complaints investigated	1% of 138 complaints investigated Winnipeg PS = 1	3% of 117 complaints investigated Winnipeg PS = 3

Table 8: Incidents Alleging Injuries from Use of Force

2016 (n=60)	2015 (n=61)	2014 (n= 66)	2013 (n=44)
49% of 122 Winnipeg PS = 53 Brandon PS = 3 Dakota Ojibway PS = 1 Other = 3	44% of 139 complaints investigated Winnipeg PS = 60 Morden PS = 1	48% of 138 complaints investigated Winnipeg PS = 57 Brandon PS = 7 Winkler PS = 2	38% of 117 complaints investigated Brandon PS = 6 Winnipeg PS = 38

Table 9: Disposition of Complaints	2016 (n =126)	2015 (n=92)	2014 (n=132)	2013 (n=128)
Dismissed by commissioner as outside scope of act	27 (21%)	17 (18%)	17 (13%)	21 (16%)
Dismissed by commissioner as frivolous or vexatious	1 (1%)	0	1 (1%)	0
Dismissed by commissioner as not supported by sufficient evidence to justify a hearing	67 (53%)	20 (22%)	48 (36%)	60 (47%)
Abandoned or withdrawn by complainant	29 (23%)	52 (57%)	60 (46%)	43 (34%)
Resolved informally	0	1 (1%)	4 (2%)	2 (1.5%)
Public hearing before a provincial court judge	2 (2%)	1 (1%)	1 (1%)	2 (1.5%)
Admission of guilt by respondent officer	0	0	0	0
Disposed via criminal Procedure	0	1 (1%)	1 (1%)	0

Table 10: Legal Involvement of Complainants	2016 (n=122)	2015 (n=139)	2014 (n=137)	2013 (n=117)
No charges	39 (32%)	59 (42%)	63 (45%)	49 (42%)
Traffic offences	12 (10%)	23 (17%)	16 (12%)	15 (13%)
Property offences	5 (4%)	0	3 (2%)	3 (2.5%)
Intoxicated persons detention	4 (3%)	4 (3%)	8 (6%)	3 (2.5%)
Cause disturbance	0	1 (1%)	1 (1%)	0
Assault police officer/resist arrest	13 (11%)	17 (12%)	20 (14%)	15 (13%)
Impaired driving	3 (2%)	3 (2%)	1 (1%)	2 (2%)
Offences against another person	5 (4%)	7 (5%)	5 (4%)	6 (5%)
Domestic disputes	1 (1%)	1 (1%)	3 (2%)	1 (1%)
Drugs	1 (1%)	5 (4%)	0	4 (3%)
<i>The Mental Health Act</i>	6 (5%)	3 (2%)	4 (3%)	6 (5%)
Other	33 (27%)	16 (11%)	14 (10%)	13 (11%)

Table 11: Provincial Judges' Review of Commissioner's Decision to Take No Further Action	2016	2015	2014	2013
	13	6	9	6

Table 12: Referrals by Commissioner of Complaint for Criminal Investigation	2016	2015	2014	2013
	1	1	0	0

Table 13: Complainants Have Also Lodged a Criminal Complaint with Police	2016	2015	2014	2013
	13	6	13	5

**Table 14: Time Span of Ongoing Investigations Carried Over
as of December 31, 2016**

YEAR	1-3 Months	4-7 Months	8-12 Months	13-18 Months	19-23 Months	24+ Months	Total
2009	0	0	0	0	0	1	1
2011	0	0	0	0	0	1	1
2012	0	0	0	0	0	1	1
2013	0	0	0	0	0	2	2
2014	0	0	0	0	0	15	15
2015	0	0	0	24	13	6	43
2016	34	27	6	0	0	0	67
Total	34	27	6	24	13	26	130

Table 15: Files Concluded in 2016 by Year of Origin

Year	Number of Files	Average Time to Close Investigation
2012	2	23 months
2013	4	13 months
2014	26	18 months
2015	39	9 months
2016	55	3 months
Total	126	9 months

Table 16: Length of Time to Complete Investigations	2016	2015	2014	2013	2012
Average Number of Months	9	7	6	8	7

Average Number of Months to Complete Investigation

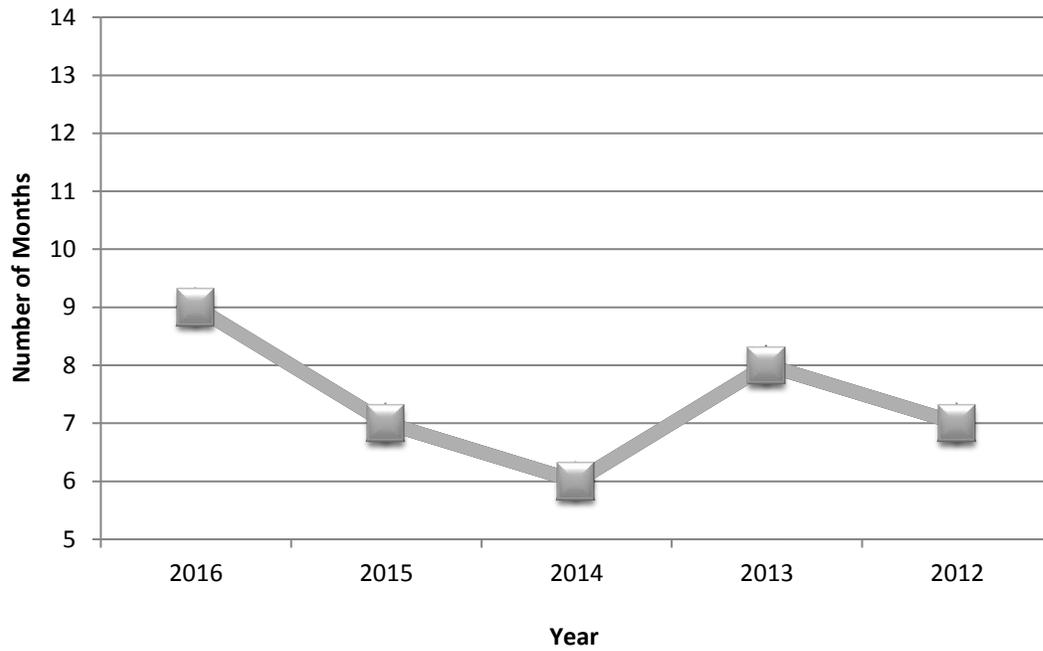


Table 17: Location of Incident	2016 (n=122)	2015 (n=139)	2014 (n=138)	2013 (n=117)	2012 (n=148)
Street	34	49	48	38	53
Private residence	51	50	44	29	50
Public building/place	7	11	16	9	18
Police station	14	8	19	14	15
Other	16	21	11	27	12

Location of Incident

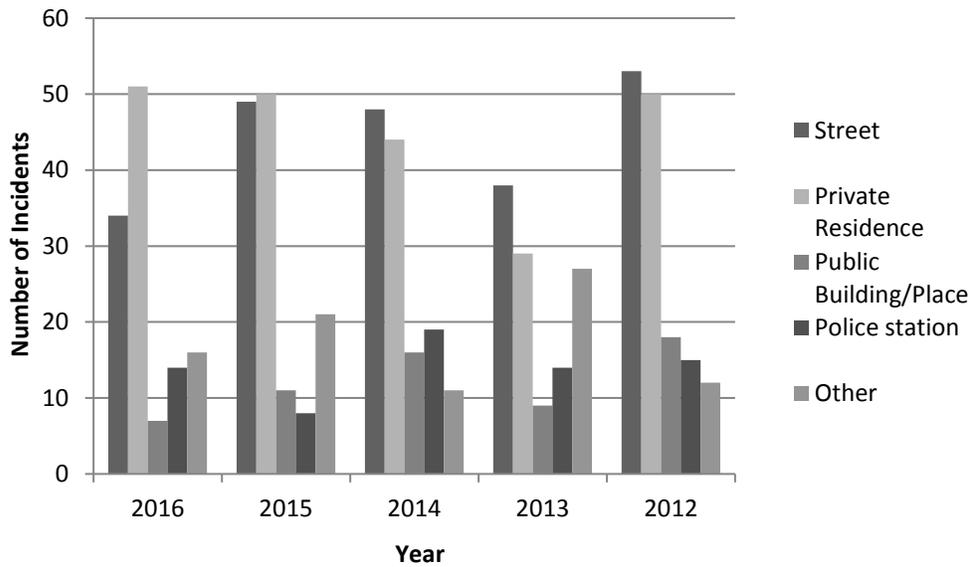


Table 18: Complainant Demographics

SEX	2016 (n=122)	2015 (n=139)	2014 (n=138)	2013 (n=117)	2012 (n= 148)
Male	83 (68%)	86 (62%)	94 (68%)	79 (67%)	93 (63%)
Female	39 (32%)	53 (38%)	44 (32%)	36 (31%)	55 (37%)
Sex Unknown	0	0	0	2 (2%)	0
AGE	2016 (n=122)	2015 (n=139)	2014 (n=137)	2013 (n=117)	2012 (n= 148)
Over 50	18 (15%)	32 (23%)	27 (20%)	22 (19%)	31 (21%)
40 - 49	21 (17%)	22 (16%)	32 (23%)	21 (18%)	22 (15%)
30 - 39	26 (21%)	32 (23%)	30 (22%)	24 (20.5%)	36 (24%)
18 – 29	22 (18%)	27 (19%)	28 (20%)	23 (19.5%)	22 (15%)
Under 18	20 (16%)	18 (13%)	11 (8%)	6 (5%)	21 (14%)
Birth Date Unknown	15 (12%)	8 (6%)	10 (7%)	21 (18%)	16 (11%)
Average Age	25	36	38	40	49
Oldest Complainant	66	82	82	74	72
Youngest Complainant	13	14	14	15	13

