

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

**Annual Report
2019**

This publication is available in alternate formats, upon request, by contacting:

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en français qui figure en début du document.



**ATTORNEY GENERAL
MINISTER OF JUSTICE**

Room 104
Legislative Building
Winnipeg, Manitoba R3C 0V8
CANADA

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 *2019 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, 2019.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Cameron Friesen".

Honourable Cameron Friesen
Minister of Justice
Attorney General



Justice

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The Honourable Cameron Friesen
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 34th annual report for the period of January 1, 2019, to December 31, 2019.

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,

Andrew Minor
Commissioner

Monsieur Cameron Friesen
Ministre de la Justice
Procureure générale

Monsieur le 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 34^{ème} 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 2019.

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, Monsieur le Ministre, mes salutations distinguées.

Le commissaire,



Andrew Minor

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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 police board 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 Royal Canadian Mounted Police (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.

A Manitoba police officer who has been appointed as a police officer or peace officer in another province or territory is subject to investigation and discipline in Manitoba under *The Law Enforcement Review Act* with respect to his or her conduct in the other jurisdiction, as if the conduct took place in Manitoba, even if an investigation, hearing or inquest has been held in the other jurisdiction.

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*. Complaints involving police officers from outside of Manitoba's jurisdiction can result in recommendations by a judge, but no penalty can be imposed.

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 service
- 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.

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 court 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 court 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 court 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 Provincial Court 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 court judge for a public hearing.

Penalties that may be imposed by the provincial court 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*.

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

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 Regulations
- Public Hearings and Reviews
- News Releases
- Annual Reports
- Links
- Site Map
- Disclaimer and Copyright

Organizational Structure

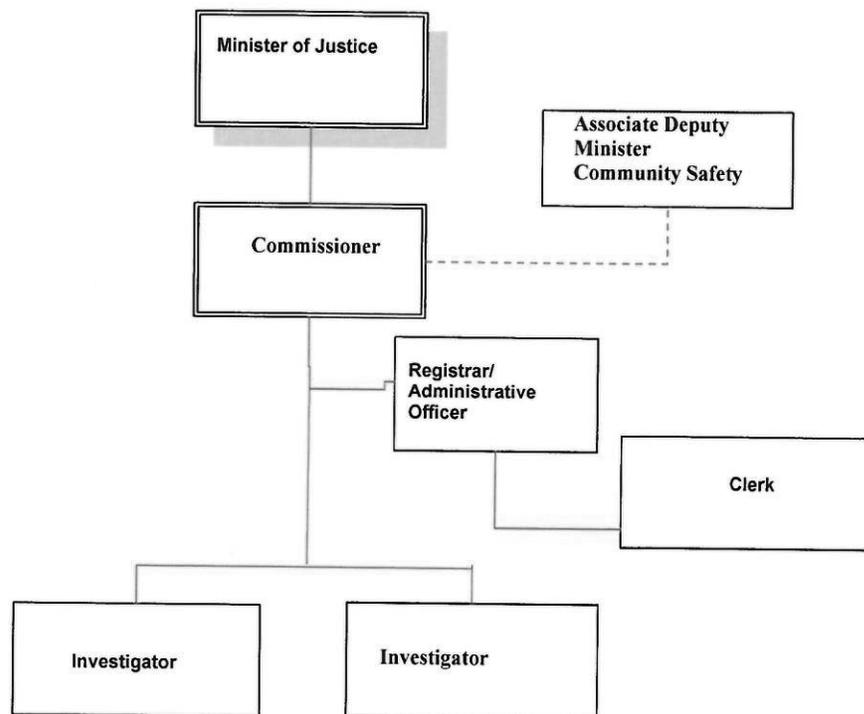
The commissioner is required to submit an annual report on the performance of his duties and functions to the minister and to each police board in the province that has established a police service.

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, 2019 and ending March 31, 2020 is:

Full Time Employees (filled positions)	3
Total Salaries (\$000`s).....	\$326
Total Operating Budget (\$000`s).....	\$ 61
TOTAL	\$387

Law Enforcement Review Agency



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
- met with Communications staff assigned to Justice
- presented to Winnipeg Police Service recruit and cadet classes on *The Law Enforcement Review Act*
- distributed LERA court decisions to all Manitoba police agencies
- met with the executive director of the Manitoba Police Commission
- ongoing contact with Investigators of the Winnipeg Police Service Professional Standards Unit
- met with Legal Services Branch
- met with Chief and Inspector, Brandon Police Service
- met with Director, Independent Investigation Unit

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 des services de 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 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 transmis à tous les services de police du Manitoba les décisions des tribunaux en vertu de la Loi sur les enquêtes relatives à l'application de la loi;
- ont rencontré le directeur général de la Commission de police du Manitoba;
- ont communiqué de manière continue avec les enquêteurs de l'unité des normes professionnelles du Service de police de Winnipeg;
- 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;

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 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.

Under Section 13 (4) of the Act, the burden of proof is on the complainant to show that the commissioner erred in declining to take further action on the complaint.

The following is an example of when the commissioner decided to take no further action and application was made for a review by a Provincial Court Judge.

Insufficient Evidence

- An adult woman, the complainant, alleged that officers were discourteous when they did not take her concerns seriously, insulted her and failed to follow through on her concerns. Officers attended to the residence of the complainant to deal with a call about her well-being. They were aware that earlier that day, she had refused treatment from the Winnipeg Fire and Paramedic Service. The two respondent officers interacted with her in that context.

The complainant alleges that the officers refused to investigate her concerns. She was concerned that she had been threatened by someone. She was of the belief that someone may have tried to harm her by running her down with a vehicle. She also alleges that the officers failed to investigate her concern that there may have been an attempt to poison her. The attempt related to an oil product which she had ordered but which she believed to be adulterated with a toxic substance. She complained that the officers failed to take a sample of the product for analysis. She alleges that the officers insulted her by providing her with some information about a resource that existed in the community.

The officers responded that the circumstances had caused them to be concerned about her health. Her apartment was in disarray, including having garbage and clothing on the floor and insects in the air. They responded that they had determined that the messages did not qualify as threats. The complainant was unable to explain why she had rejected medical attention even though she was poisoned. There would not have been any reason to seize a sample of the oil. The officers had suggested that she might seek some help from a social service type of agency. The officers denied any abusive conduct.

The Commissioner reviewed the original complaint and investigation with respect to whether there was evidence of an abuse of authority and, if so, whether further action was warranted. The Commissioner provided a decision and determined that the issues complained of did not rise to the level where a referral to a public hearing was justified. He determined that there was insufficient evidence to establish that there had been abusive conduct, an abuse of authority or any intentional insulting behaviour on the part of the officers involved.

On completion of the LERA investigation, the commissioner found there was insufficient evidence to justify referral to a public hearing and declined to take further action. Upon receiving the decision, the complainant made application, pursuant to section 13(2) of the Act, to have the commissioner's decision reviewed by a Provincial Court Judge.

DECISION: The Provincial Court Judge in a written decision determined the decision of the Commissioner in the context of the material before him, was reasonable. No further action should take place and the application was dismissed.

* * * * *

Case Summaries

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. Judges sit as a persona designata for exercising the duties or powers under the Law Enforcement Review Act. 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 Commissioner referred one file to a public hearing before a Provincial Court Judge. In 2019 the decision was released and subsequently the penalty imposed.

- A hotel owner filed a complaint against a member of a police service alleging that in the course of a sexual assault investigation and in obtaining video recordings, abused his authority in word and deed in the course of his dealings with the hotel day manager and hotel manager.

The officer in question attended an establishment looking for footage of an incident involving a sexual assault. He returned for a second visit asking for the owner who was not in. On the third visit, the officer attended with a female officer. He advised the day manager that the police needed the footage and that if they did not receive it they might have to come on the hotel’s busiest night to obtain it. The next time he went to the establishment he went alone. He advised the day manager he wanted to talk to her alone. She complied. The officer who was loud and appeared frustrated told her that they could arrest her boss and he could go to jail if they did not let him look at the monitors in the server room to check the positioning of the cameras. The manager felt frightened so she let the officer view the cameras. Then he told her he wanted the actual footage which she let him view. The officer then called the hotel owner on his cell phone and was loud and aggressive. He repeated to the owner his threat of coming back on the hotel’s busiest night.

While attending an off work event, a liquor and gaming inspector testified that she had met the hotel owner, who was a friend. The officer in question was also present doing security work in a private capacity at this event. The inspector said the officer came over to her asking if she was still doing inspections to which she replied yes. He said we should do an inspection of the hotel some day and that the hotel was obstructing him or them in doing his job.

The officer in question also admitted in cross-examination that he mentioned the hotel owner's name in a lecture he gave to junior police officers on the topic of obtaining videos and use of production orders.

Another police officer testified at the hearing with respect to a telephone conversation between himself and the officer in question. The conversation was recorded and contained more threats to the hotel owner's business.

DECISION OF THE HEARING:

The Provincial Court Judge made the following conclusions:

- *The officer threatened the arrest of the owner, to the day manager and himself at a point where there was no basis in fact or law to arrest the owner or to threaten to do so. This was oppressive and abusive conduct, and amounts to an abuse of authority.*
- *The threats made by the officer were not simply out of anger and frustration but in the case of the day manager, in order to coerce her into providing access to the private server room. This too was oppressive conduct, and amounted to an abuse of the officer's authority.*
- *The language used by the officer to the hotel owner and day manager described in the evidence was uncivil and discourteous, and amounted to an abuse of authority.*
- *The officer repeatedly threatened to do harm to the business and that this too amounted to an abuse of authority.*

PENALTY DECISION:

- *The Provincial Court Judge found the officer committed three disciplinary defaults. Two disciplinary defaults abusing his authority contrary to subsections 29 (a)(iii) (and (iv) of The Law Enforcement Review Act, by using oppressive or abusive conduct or language, and being discourteous and uncivil to the hotel owner and hotel day manager. The third disciplinary default is an abuse of authority to s. 29(a) of the Act, by threatening to do harm to the hotel owner's business.*
- *With respect to the disciplinary defaults contrary to subsections 29(a) (iii) and (iv) of The Law Enforcement Review Act, that is, by using oppressive and abusive conduct or language, and being discourteous and uncivil to the hotel owner and hotel day manager, forfeiture of five days pay is the appropriate penalty for each, concurrent to each other.*

- *With respect to the third disciplinary default, an abuse of authority contrary to s. 29(2) of the Act by threatening to do harm to the hotel`s business. This is the most serious default committed and it was determined that a reduction in rank is the necessary penalty for this default.*

* * * * *

Case Summaries

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 are samples where the commissioner decided no further action was required as the matter was outside the scope of *the Act*.

- A woman complained that the police seized the vehicle of her late husband even though it was registered in her name. Her late husband was driving at the time. The woman contacted the police service and was informed the vehicle was being held for fingerprints and the registered owner would be notified after the investigation was completed. After several weeks she found out through the towing company her car was impounded and being put up for auction due to unpaid bills. The complainant paid the fees to get her vehicle released and was seeking reimbursement from LERA for the costs.

DECISION: The commissioner reviewed the complaint and decided that the complaint is out of scope of the Law Enforcement Review Agency. The commissioner was of the view that the complaint is a quality of service complaint and he does not have the authority to investigate the complaint or order reimbursement for costs. Quality of service complaints are the responsibility of the chief of the police to resolve. The Commissioner referred the complainant to the chief of police's office and to the City of Winnipeg to make a claim for reimbursement.

* * * * *

- A man states he was in the process of moving into a new apartment complex when one of his pieces of furniture proved too big to be moved through the door. He left the piece of furniture in a secure vestibule and went to make alternate arrangements for moving it into the building. When he returned, the furniture piece was gone. He contacted police to report the theft. Police investigated. He was told by police that only one security camera caught a single image of the property and the individual responsible and that it was impossible to identify the person because of the distance between the camera and where the theft took place. The complainant states the police are refusing to pursue the investigation and refuse to take his calls.

DECISION: The Commissioner reviewed the complaint and decided that it is not within the scope of his authority under the LERA act because the complainant did not present evidence of a disciplinary default under section 29 of the LERA act. He further stated that it was his belief that this was a quality of service complaint. Quality of service complaints are the responsibility of the chief of the police to resolve. The Commissioner referred the complainant to contact the chief of police's office.

Case Summaries

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.”

There were no instances where the commissioner decided to take no further action on a complaint that was found to be vexatious.

Case Summaries

Abandoned or Withdrawn

The investigation of a complaint made under The Law Enforcement Review Act is complainant driven. That is to say that the complainant may, at any time in the process, withdraw the complaint and the matter will be closed. Complainants are able to seek resolutions of their complaints from chiefs of police. Where a chief accepts a complaint for internal investigation, a complainant may choose an alternative avenue of resolution and the commissioner shall close the complaint.

- An adult male, the complainant, filed a complaint alleging police handcuffed and punched him and a friend causing bruises and injuries. He also alleged the officers used racial slurs.

The complainant was interviewed at the correctional centre. The complainant said the police reports are inaccurate and he denied having a handgun on him. He feels the officers were too aggressive. When the LERA process was explained to him, he said that he wanted to sue the police service and his lawyer will do that. He thought a LERA complaint would eventually result in compensation. The investigator informed him that would not be the case and the complainant decided not to proceed with his complaint.

Following the complainant's direction, the Commissioner reviewed and closed the LERA complaint with no further action.

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- An adult male, the complainant, was parked after dropping off a friend when police officers drove by and turned around with their lights flashing. They asked for his driver's licence and registration. They advised the complainant he had a curfew and called for backup. The complainant tried to explain that he had recently moved from out of province and provided his valid licence and registration from that province. He also indicated he had problems in the past with someone using his name as an alias when stopped by the police.

The officers then placed the complainant under arrest and confiscated his two cell phones wanting to know why he had two, accusing him of selling drugs. He was handcuffed and placed into the back of the police car. He complained repeatedly about the heat and that he had asthma, making it difficult to breath. He asked for water and that an ambulance be called as he was having trouble breathing. The complainant alleges police then dragged him out of the car and slammed him to the ground putting their knees and weight onto his back. He also alleges the handcuffs were too tight, hurting him and causing numbness in his hands.

On the way to the police station the officers pulled their vehicles over to speak to each other and at the police station told the complainant "sorry, we got the wrong guy". They drove the complainant back to his vehicle. The complainant attended the hospital for his injuries.

The complainant called the LERA office and indicated he did not want to proceed with his complaint. He would be seeking compensation from the police service for the damages to his hand and wanted it noted on the file.

The Commissioner reviewed and concluded the file as per the complainant's request to withdraw his complaint.

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- A complaint was forwarded from a police service to the LERA office. The complainant and her boyfriend had met with a sergeant in relation to an ongoing abuse case regarding their children. They said that the sergeant was pestering them about taking a polygraph test and using inappropriate language.

An investigator met with the female complainant and advised that LERA had no authority to make inquiries on their behalf about the police investigation or investigative decisions made by officers or their supervisors.

The complainant said she no longer wished to pursue a complaint with LERA and was prepared to work with the respondent officer or an officer directed to resolve their concerns. The Commissioner wrote to the chief of police and respondent officer indicating that LERA no longer has a role to play in the resolution of her concern.

The Commissioner closed the complaint as abandoned

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Case Summaries

Informal Resolution

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

The following is a sample of a complaint resolved formally in 2019:

- The complainant, an adult male, walked into the LERA office wanting to make a complaint about a police officer. The Investigator interviewed the complainant about his complaint. The complainant had lost control of his scooter and was thrown to the ground. This happened in full view of an officer who came to assist. The complainant was injured from the fall and the officer called an ambulance. A piece of the scooter had fallen off during this fall and was missing. The complainant thought the officer seized the property and did not return it.

The complainant was advised the complaint was a quality of service complaint. The investigator contacted the police service to seek an informal resolution of the complaint.

The police service contacted the officer involved. The officer returned to the scene of the accident, found the lost property that was left in the long grass and returned it to the complainant.

The complaint was resolved informally.

* * * * *

Criminal Charges

Some complaints of officer misconduct may fall under Section 29 of *The Law Enforcement Review Act* (the Act) and 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.*

There were no files referred for criminal charges in 2019.

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Statistical Analysis

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- LERA's jurisdiction extends to 11 police services with 1,651 police officers. Total population served is 824,328.
 - Winnipeg Police Service accounts for 84% of complaints made to LERA. Brandon Police Service accounts for 7% and other services account for the remainder.
 - There were 153 files opened in 2019, down by 7 complaints from 166 in 2018. The four (4) year average is 180 new files per year.
 - The number of formal complaints filed is 87, down 11 from 98 formal complaints in 2018.
 - Sixty-six (66) complaints were resolved at intake, down from 68 in 2018.
 - In 2019, there were 166 total investigations. There were 187 investigations in 2018.
 - There were 88 files closed in 2019, down 14 from 102 in 2018.
 - There were no complaints alleging the misuse of pepper spray in 2019.
 - There were five (5) incidents alleging misuse of handcuffs in 2019, down two (2) from three (3) in 2018.
 - There were three (3) complaints of misuse of the Taser in 2019, compared to two (2) in 2018.
 - Incidents alleging injuries from the use of force decreased to 36, from 38 in 2018. Allegations of injuries were made in 41% of complaints investigated.
 - There was one (1) informal resolution of complaints in 2019. There were none in 2018. LERA continues to actively support and, whenever possible, engage in alternative dispute resolution. This method of resolution remains a priority, and complainants and respondents are encouraged to use it.
 - The percentage of complaints abandoned by complainants increased from 2018. 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 down from 14 to 1 in 2019. The four (4) year average is 9. (See Table 11)
 - LERA does not conduct criminal investigations. When a case shows evidence that a criminal offence may have been committed by an officer, 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 2019, four (4) criminal complaints were made after a LERA complaint was also filed. This was down 11 from 2018. (See Tables 12 and 13)

- During a criminal investigation against an officer or a complainant, the LERA investigation is put on hold. 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. The length of time to complete investigation remained at six (6) months for 2019, the same as in 2018. (See Tables 15 and 16)

- The average age of all complainants was 38. The oldest complainant was 69 and the youngest was 13. (See Table 18)

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- La compétence de l'Organisme chargé des enquêtes sur l'application de la loi s'étend à 11 services de police, ce qui représente 1 468 agents de police. Au total, l'Organisme sert 824 328 personnes.
 - 84 % des plaintes déposées auprès de l'Organisme concernent le Service de police de Winnipeg, 7 % concernent le Service de police de Brandon et les autres services se partagent le reste.
 - En 2019, l'Organisme a ouvert 153 dossiers, soit 7 de moins qu'en 2018 (166). La moyenne sur quatre (4) ans s'élève à 180 nouveaux dossiers par année.
 - Le nombre de plaintes officielles déposées a été de 87, soit 11 de moins qu'en 2018 (98).
 - Soixante-six (66) plaintes ont été réglées à la réception, ce qui représente une baisse par rapport aux 68 plaintes réglées à la réception en 2018.
 - En 2019, il y a eu 166 enquêtes. Il y en a eu 187 en 2018.
 - En 2019, 88 enquêtes ont été achevées, soit 14 de moins qu'en 2018 (102).
 - En 2019, aucune plainte n'a été déposée concernant l'utilisation abusive de vaporisateur de poivre.
 - Il y a eu cinq (5) incidents relatifs à une utilisation abusive des menottes en 2019, soit deux (2) de moins qu'en 2018 (3).
 - Il y a eu trois (3) plaintes portant sur l'utilisation abusive du Taser en 2019, comparativement à deux (2) en 2018.
 - Les allégations de blessures liées au recours à la force ont baissé, passant de 38 en 2018 à 36. Les allégations de blessures ont représenté 41 % des plaintes ayant fait l'objet d'une enquête.
 - Il y a eu un (1) règlement de plainte sans formalités en 2019. Il n'y en avait eu aucun en 2018. L'Organisme chargé des enquêtes sur l'application de la loi continue d'encourager activement le recours à une méthode alternative de résolution des différends, et lorsque c'est possible, à y recourir. 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 augmenté par rapport à 2018. Quand un enquêteur de l'Organisme n'a pas pu trouver le plaignant, une lettre est envoyée à sa dernière adresse connue, lui demandant 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 2019, 1 plaignant a demandé la révision de la décision du commissaire par un juge, comparativement à 14 l'année précédente. La moyenne sur quatre (4) ans est de 9. (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 par un agent de police, le commissaire ou le juge de la Cour provinciale 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 2019, quatre (4) plaintes criminelles ont été déposées après le dépôt d'une plainte auprès de l'Organisme, soit onze (11) de moins qu'en 2018. (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. 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. Le délai nécessaire pour conclure une enquête est demeuré de six (6) mois en 2019, c'est-à-dire identique à 2018. (Voir les tableaux 15 et 16)

- L'âge moyen des plaignants était de 38 ans. Le plaignant le plus âgé avait 69 ans et le plus jeune avait 13 ans. (Voir tableau 18)

Table 1: Complaints – Listed by Police Service**	Police Officers **	Population ***	2019 (n=87)	2018 (n=98)	2017 (n=109)	2016 (n=122)	2015 (n=139)
Altona and Plum Coulee	8	5,116	0	0	0	0	1 (0.7%)
Brandon	89	48,859	6 (7%)	8 (8%)	5 (4.5%)	6 (5%)	4 (3%)
MB First Nations Police Service (MFNPS)	36	20,219	2 (2.5%)	1 (1%)	2 (2%)	4 (3%)	0
Morden	16	8,668	0	0	2 (2%)	1 (1%)	1 (0.7%)
Rivers	4	1,257	1 (1%)	0	1 (1%)	1 (1%)	0
Ste. Anne	5	2,114	0	0	0	1 (1%)	0
Winkler	19	12,591	1 (1%)	1 (1%)	1 (1%)	1 (1%)	2 (1.4%)
Winnipeg****	1,468	705,244	73 (84%)	85 (87%)	94 (86%)	102 (83%)	128 (92%)
RM of Cornwallis*	1	4,520	0	0	0	0	0
RM of Springfield*	4	15,342	1 (1%)	0	0	0	0
RM of Victoria Beach*	1	398	0	0	0	0	0
Other	0	0	3 (3.5%)	3 (3%)	4 (3.5%)	6 (5%)	3 (2.2%)
Total	1,651	824,328	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 Manitoba First Nations Police Service

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

Table 2: Public Complaints	2019	2018	2017	2016
Files Opened	153	166	190	214
Resolved at Intake	66	68	81	92
Formal Complaints Received	87	98	109	122

Public Complaints

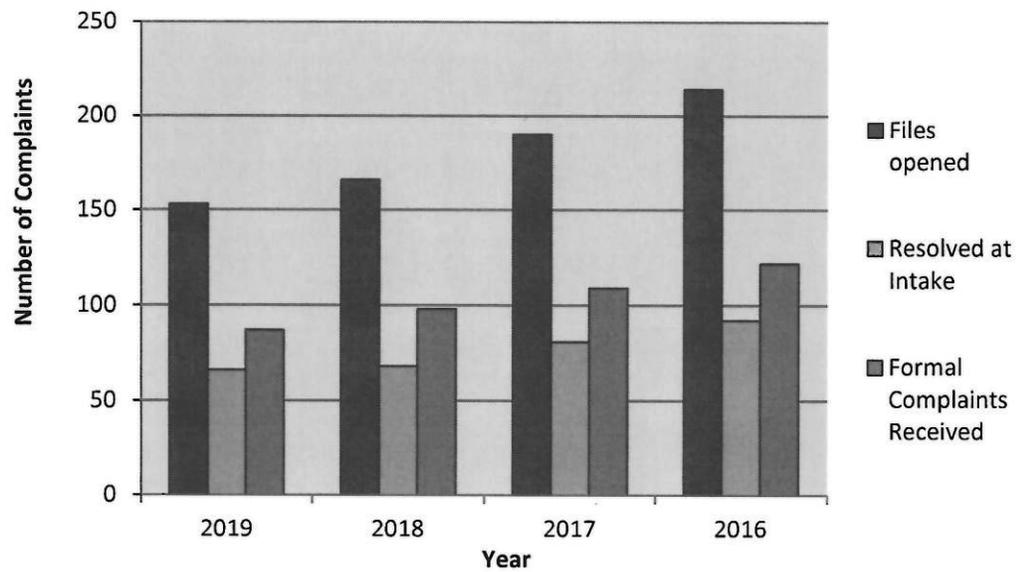


Table 3: Investigations Conducted				
	2019	2018	2017	2016
Total Investigations	166	187	222	252
Investigations Initiated - Files Opened	87	102	119	122
Ongoing Investigations Carried Over as of December 31st of the Year Shown	79	85	103	130

Investigations Conducted

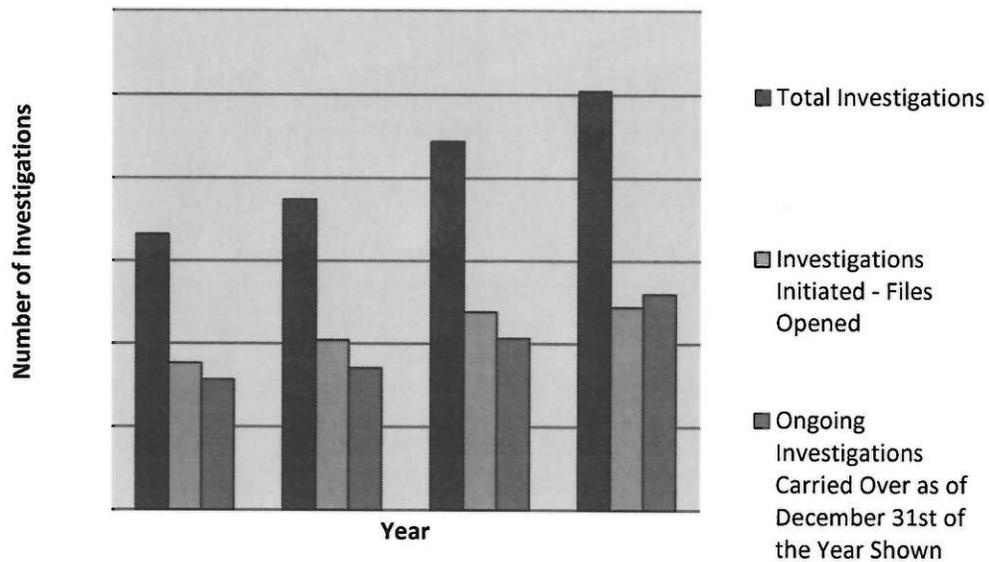


Table 4: Complainants' Allegations: Discipline Code Section 29 <i>The Law Enforcement Review Act</i>	2019	2018	2017	2016
Abuse of authority Subsection 29(a)	33	41	45	38
Arrest without reasonable or probable grounds Subsection 29(a)(i)	7	9	14	13
Using unnecessary or excessive force Subsection 29(a)(ii)	40	41	45	62
Using oppressive or abusive conduct or language Subsection 29(a)(iii)	14	17	24	31
Being discourteous or uncivil Subsection 29 (a)(iv)	21	32	34	40
Seeking improper personal advantage Subsection 29(a)(v)	0	0	2	0
Serving civil documents without proper authorization Subsection 29(a)(vi)	0	0	0	0
Differential treatment without cause Subsection 29(a)(vii) <i>The Human Rights Code</i> Subsection 9(2)	3	11	11	12
Making false statement(s) Subsection 29(b)	0	5	3	1
Improperly disclosing information Subsection 29(c)	0	2	0	3
Failing to exercise care or restraint in use of firearm Subsection 29(d)	0	0	0	0
Damaging property or failing to report damage Subsection 29(e)	0	4	3	4
Failing to provide assistance to person(s) in danger Subsection 29(f)	0	3	4	2
Violating person's privacy (under <i>The Privacy Act</i>) Subsection 29(g))	0	1	3	3
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	1	0

Table 5: Incidents Alleging Misuse of Pepper Spray

2019 (n=0)	2018 (n=0)	2017 (n=0)	2016 (n=0)
0% of 87 complaints investigated	0% of 98 complaints investigated	0% of 109 complaints investigated	0% of 122 complaints investigated

Table 6: Incidents Alleging Misuse of Handcuffs

2019 (n=5)	2018 (n=3)	2017 (n=4)	2016 (n=5)
6% of 87 complaints investigated Winnipeg PS = 4 Brandon PS = 1	3% of 98 complaints investigated Winnipeg PS = 3	4% of 109 complaints investigated Winnipeg PS = 3 Dakota Ojibway PS = 1	4% of 122 complaints investigated Winnipeg PS = 4 Other = 1

Table 7: Incidents Alleging Misuse of Taser

2019 (n=3)	2018 (n=2)	2017 (n=0)	2016 (n=4)
3% of 87 complaints investigated Winnipeg PS = 2 MB First Nations Police = 1	2% of 98 complaints investigated Winnipeg PS = 2	0% of 109 complaints investigated	3% of 122 complaints investigated Winnipeg PS = 3 Dakota Ojibway PS = 1

Table 8: Incidents Alleging Injuries from Use of Force

2019 (n=36)	2018 (n=38)	2017 (n=44)	2016 (n=60)
41% of 87 complaints investigated Winnipeg PS = 30 Brandon PS = 3 MB First Nations PS = 2 Other = 1	39% of 98 complaints investigated Winnipeg PS = 34 Brandon PS = 3 MB First Nations PS = 1	40% of 109 complaints investigated Winnipeg PS = 39 Morden PS = 2 Dakota Ojibway PS = 1 Brandon PS = 2	49% of 122 complaints investigated Winnipeg PS = 53 Brandon PS = 3 Dakota Ojibway PS = 1 Other = 3

Table 9 Disposition of Complaints	2019 (n=88)	2018 (n=102)	2017 (n=119)	2016 (n =126)
Dismissed by commissioner as outside scope of act	23 (26%)	33 (32%)	25 (21%)	27 (21%)
Dismissed by commissioner as frivolous or vexatious	0	0	1 (1%)	1 (1%)
Dismissed by commissioner as not supported by sufficient evidence to justify a hearing	25 (28%)	39 (38%)	50 (42%)	67 (53%)
Abandoned or withdrawn by complainant	38 (44%)	30 (30%)	42 (35%)	29 (23%)
Resolved informally	1 (1%)	0	1 (1%)	0
Public hearing before a provincial court judge	1 (1%)	0	0	2 (2%)
Admission of guilt by respondent officer	0	0	0	0
Disposed via criminal Procedure	0	0	0	0

Table 10: Legal Involvement of Complainants	2019 (n=87)	2018 (n=98)	2017 (n=109)	2016 (n=122)
No charges	41 (48%)	43 (44%)	40 (36%)	39 (32%)
Traffic offences	11 (13%)	10 (10%)	16 (14%)	12 (10%)
Property offences	2 (2%)	4 (4%)	2 (2%)	5 (4%)
Intoxicated persons detention	1 (1%)	3 (3%)	4 (4%)	4 (3%)
Cause disturbance	0	0	0	0
Assault police officer/resist arrest	7 (8%)	6 (6%)	11 (10%)	13 (11%)
Impaired driving	3 (3%)	1 (1%)	1 (1%)	3 (2%)
Offences against another person	1 (1%)	5 (5%)	5 (5%)	5 (4%)
Domestic disputes	1 (1%)	2 (2%)	0	1 (1%)
Drugs	2 (2%)	0	2 (2%)	1 (1%)
<i>The Mental Health Act</i>	2 (2%)	4 (4%)	4 (4%)	6 (5%)
Breach of Peace	0	0	1 (1%)	0
Other	16 (19%)	20 (21%)	23 (21%)	33 (27%)

Table 11: Provincial Judges' Review of Commissioner's Decision to Take No Further Action	2019	2018	2017	2016
	1	14	10	13

Table 12: Referrals by Commissioner of Complaint for Criminal Investigation	2019	2018	2017	2016
	0	0	0	1

Table 13: Complainants Have Also Lodged a Criminal Complaint with Police	2019	2018	2017	2016
	4	15	11	13

**Table 14: Time Span of Ongoing Investigations Carried Over
as of December 31, 2019**

YEAR	1-3 Months	4-7 Months	8-12 Months	13-18 Months	19-23 Months	24+ Months	Total
2014	0	0	0	0	0	2	2
2015	0	0	0	0	0	4	4
2016	0	0	0	0	0	11	11
2017	0	0	0	0	0	9	9
2018	0	0	1	10	6	0	17
2019	17	9	9	0	0	0	35
Total	17	9	10	10	6	26	78

Table 15: Files Concluded in 2019 by Year of Origin

Year	Number of Files	Average Time to Close Investigation
2013	1	53 months
2014	5	5 months
2015	7	19 months
2016	4	14 months
2017	3	7 months
2018	16	7 months
2019	52	2 months
	88	6 months

Table 16: Length of Time to Complete Investigations	2019	2018	2017	2016	2015
Average Number of Months	6	6	8	9	7

Average Number of Months to Complete Investigation

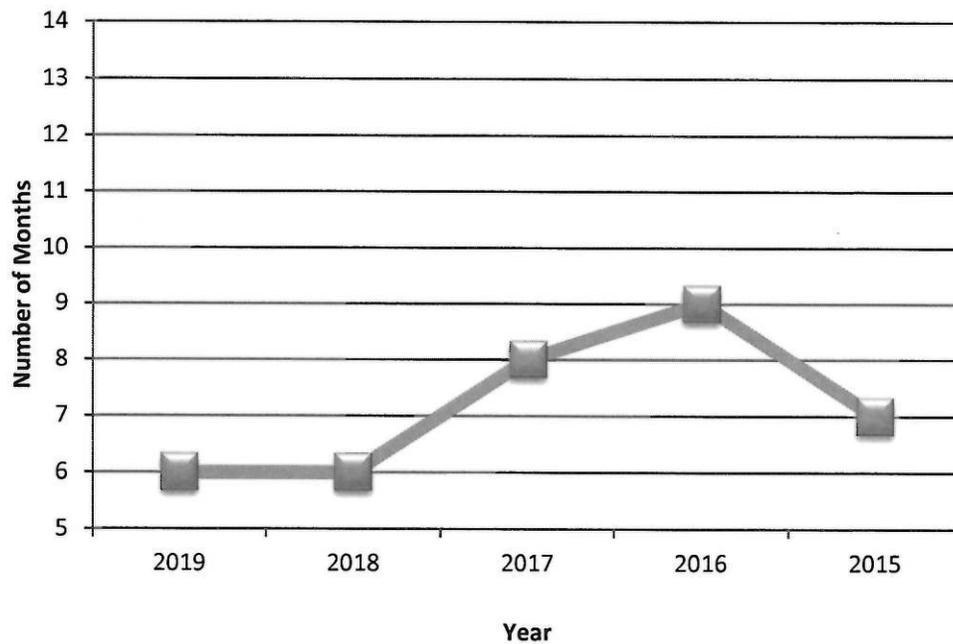


Table 17: Location of Incident	2019 (n=87)	2018 (n=98)	2017 (n=109)	2016 (n=122)	2015 (n=139)
Street	30	25	41	34	49
Private residence	15	35	35	51	50
Public building/place	5	6	5	7	11
Police station	9	14	13	14	8
Other	28	18	15	16	21

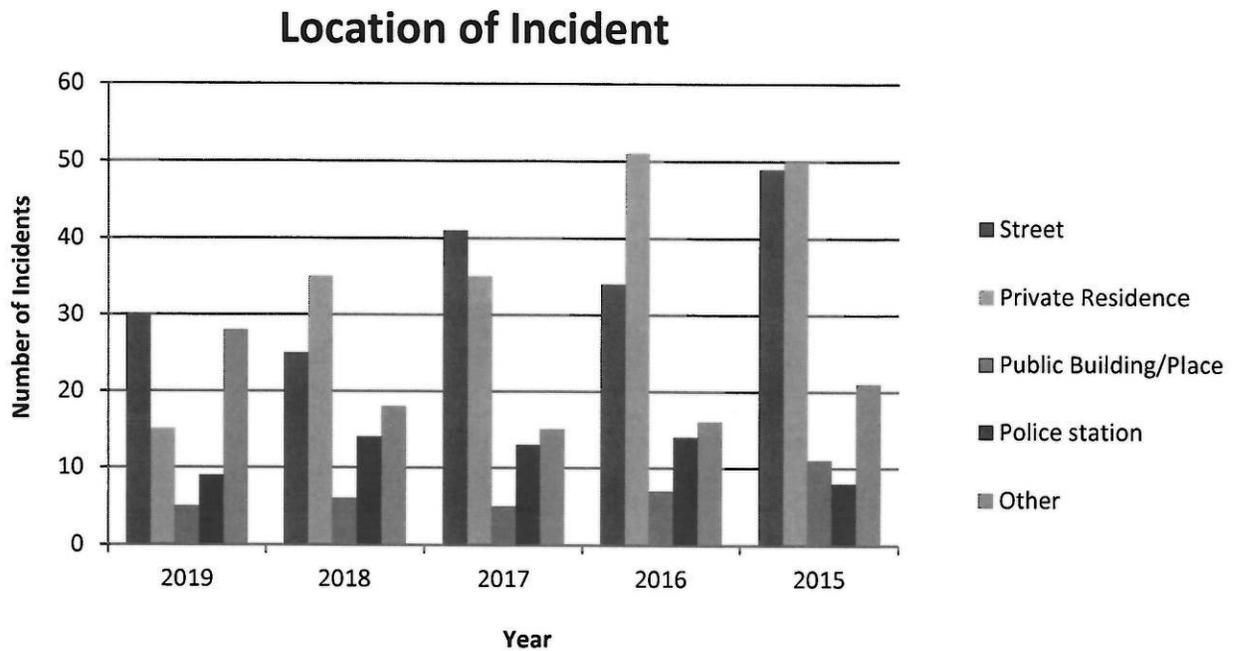


Table 18: Complainant Demographics

SEX	2019 (n=87)	2018 (n=98)	2017 (n=109)	2016 (n=122)	2015 (n=139)
Male	61 (70%)	62 (32%)	73 (67%)	83 (68%)	86 (62%)
Female	20 (23%)	36(37%)	35 (32%)	39 (32%)	53 (38%)
Sex Unknown	6 (7%)	0 (0%)	1 (1%)	0	0
AGE	2019 (n=87)	2018 (n=98)	2017 (n=109)	2016 (n=122)	2015 (n=139)
Over 50	21 (24%)	20 (20%)	23 (21%)	18 (15%)	32 (23%)
40 - 49	13 (15%)	14 (14%)	10 (9%)	21 (17%)	22 (16%)
30 - 39	20 (23%)	19 (19%)	21 (19%)	26 (21%)	32 (23%)
18 – 29	12 (14%)	13 (13%)	18 (17%)	22 (18%)	27 (19%)
Youth under 18	11 (13%)	13 (13%)	19 (17%)	20 (16%)	18 (13%)
Birth Dates Unknown	10 (11%)	19 (19%)	18 (17%)	15 (12%)	8 (6%)
Average Age	38	37	37	25	36
Oldest Complainant	69	74	78	66	82
Youngest Complainant	13	13	14	13	14



Available in alternate formats upon request