

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

**Annual Report
2017**



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**ATTORNEY GENERAL
MINISTER OF JUSTICE**

Room 104
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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 *2017 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, 2017.

Respectfully submitted,

"original signed by"

Honourable Cliff Cullen
Minister of Justice
Attorney General





Justice

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The Honourable Cliff Cullen
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 32nd annual report for the period of January 1, 2017, to December 31, 2017.

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

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Monsieur Cliff Cullen
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 32^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 2017.

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,

"original signed by"

M. E. (Max) Churley

TABLE OF CONTENTS

TITLE	PAGE
Introduction.....	9
LERA’s Mission Statement.....	9
About LERA	
What is LERA?	9
To whom does the act apply?	9
What does LERA investigate?	10
Who are complainants and respondents?.....	10
How is a complaint filed?	10
Are there time limits?	11
How is a complaint investigated?	11
How is a complaint screened?	11
Does a complainant need a lawyer?	11
How is a complaint resolved?.....	12
LERA as an Agency	13
How to Reach the Law Enforcement Review Agency	13
Website Overview	13
Organizational Structure	14
Activities/Acknowledgements	15
Activités/Remerciements	16
Case Summaries	
Commissioner’s Decision to Take No Further Action.....	18
Public Hearings Before a Provincial Judge	23
Out of Scope	26
Frivolous or Vexatious	27
Abandoned and Withdrawn.....	28
Informal Resolution	29
Criminal Charges	31
Legal Developments	33
Statistical Analysis	34
Analyse Statistique.....	36

2014 Statistical Report – Data Tables

Table 1: Complaints Listed by Police Service	38
Table 2: Public Complaints.....	39
Table 3: Investigations Conducted	40
Table 4: Complainants’ Allegations	41
Table 5: Incidents Alleging Misuse of Pepper Spray.....	42
Table 6: Incidents Alleging Misuse of Handcuffs	42
Table 7: Incidents Alleging Misuse of Taser	42
Table 8: Incidents Alleging Injuries from Use of Force	42
Table 9: Disposition of Complaints	43
Table 10: Legal Involvement of Complainants	44
Table 11: Provincial Judges’ Reviews of Commissioner’s Decision to Take No Further Action	45
Table 12: Complaint Referrals to Crown for Criminal Investigation... 	45
Table 13: Complainants Have Also Lodged a Criminal Complaint with Police.....	45
Table 14: Time Span of Ongoing Investigations Carried Over as of December 31, 2016	46
Table 15: Files Concluded in 2016 by Year of Origin	46
Table 16: Length of Time to Complete Investigations.....	47
Table 17: Location of Incidents	48
Table 18: Complainant Demographics	49

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.

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. 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 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*.

LERA has a commissioner, an administrative officer/registrar, and two investigators. Two other investigator positions are presently vacant.

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 – 2017

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

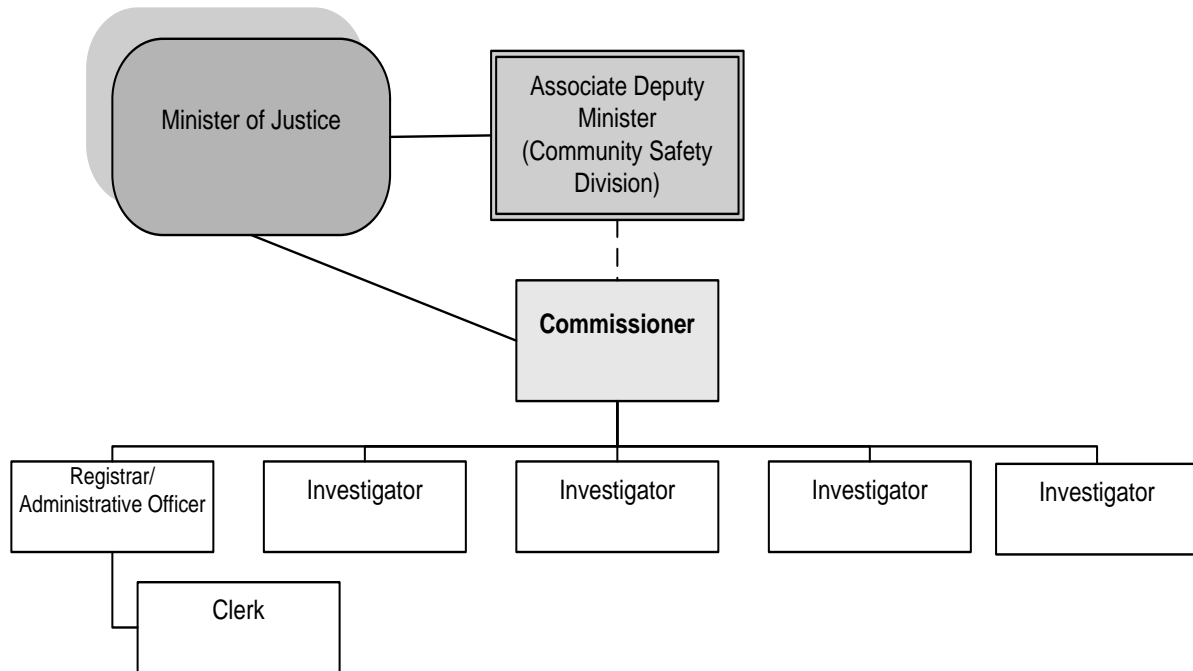
Organizational Structure

The commissioner is required to submit an annual report on the performance of his duties and functions to the minister and to each 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, 2017 and ending March 31, 2018 is:

Full Time Employees (filled positions)	4
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
- 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
- regular liaison with Program Manager of Main Street Project and staff
- presented to the Brandon Police Service students
- presentation at Assiniboine Community College, Brandon
- participated in the Manitoba Bar Association Law Day Open House at the Manitoba Law Courts Complex
- participated and completed baseline count for Regulatory Accountability and Red Tape Reduction Initiative

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 assisté à la cérémonie de remise des diplômes des classes de recrues du Service de police de Winnipeg;
- 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;
- ont maintenu un contact régulier avec la personne responsable des programmes du Main Street Project et avec le personnel de ces programmes;
- ont présenté un exposé devant les étudiants du Service de police de Brandon;
- ont présenté un exposé au Collège communautaire Assiniboine de Brandon;
- ont participé à la séance portes ouvertes de l'Association du Barreau du Manitoba, au palais de justice de Winnipeg, à l'occasion de la Journée du droit;
- ont participé à une initiative de responsabilisation en matière de réglementation et de réduction des lourdeurs administratives et ont effectué un recensement de référence dans le cadre de cette initiative.

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 are two samples of when the commissioner decided to take no further action and application was made for a review by a Provincial Court Judge.

- An adult male, hereinafter referred to as the complainant, reported that police officers abused their authority when they detained him. He said he was standing outside viewing the construction of a condominium complex when a police car slowly drove by and stopped. The complainant and the officer, hereinafter referred to as Officer 1, looked at each other without either acknowledging the other.

Officer 1, according to the complainant, exited the police vehicle, walked up to him and while taking his left arm enquired as to what he was doing and if he had any identification. The complainant produced a rent receipt bearing his name and address. Officer 1, still holding his arm, led him to the police vehicle and told him to place his hands on the hood. The complainant, said that Officer 1 handcuffed him, explaining it was for their mutual safety. In response, the complainant told Officer 1 that he would be filing a LERA complaint. The officer called for backup.

Officer 1 asked the complainant why he was at that location, to which he replied that he was looking at the condominium. The officer explained his presence by saying that there were many break-ins in the area.

The complainant estimated that about 10 to 15 minutes after the police called for backup, Officers 2 and 3 arrived and Officer 1 told them to “do a thorough body search” of him. The complainant said that he was searched along with his wallet and backpack.

The complainant said that he was not informed of his rights under *The Canadian Charter of Rights and Freedoms* (the Charter) or permitted to exercise them. He again said he would be filing a complaint with LERA and when he requested the officer’s badge numbers, he was told they would be included in the police report. He said he did not swear, resist or threaten police, nor did he do anything suspicious.

The LERA investigation included a review of the police report and an interview with the officers involved. Information taken from the report and provided by the officers indicated that Officer 1 was in the area in response to a report 24 minutes earlier, of a residential break-in, nearby. A witness reportedly saw two males both with backpacks flee the residence on foot. Officer 1 saw a male, identified as the complainant, looking at the condominium nearby. He thought it suspicious that the complainant with a backpack was in close proximity to the break-in. Additionally, in the officer’s estimation, the bicycle would explain his travelling between the two sites so quickly. The officer suspected that the complainant might have been responsible for the break-ins.

Officer 1 advised the complainant that he was being detained for a residential break-in investigation. The complainant, becoming agitated and confrontational, asked why he was being detained. The officer said that he told the complainant that he had the authority to detain him for the investigation, and in the process, to handcuff and search him, including his backpack, for weapons for officer safety reasons; all of which he did. He conceded that he did not advise the complainant of his rights under section 10(b) of the *Charter*, because the detention was very brief; some 11 minutes according to his report. He said that the complainant was handcuffed for five or six minutes.

Officers 2 and 3 also described the complainant as verbally belligerent and uncooperative.

Commissioner’s Decision:

The Commissioner conducted a close review of the information collected and was satisfied that the evidence supporting the complaint was insufficient to justify taking the matter to a

public hearing. Pursuant to Section 13(1) (c) of The Law Enforcement Review Act (the Act), the Commissioner declined from taking any 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.

Provincial Court Judge Lerner heard the review. It is worth reading the complete transcript of the Honourable Judge Lerner's decision. In outlining the reasons for his decision he, using case law, discusses in more detail, the Standard of Review and defines a default under the Act that amounts to an abuse of authority, particularly as it relates to a Charter breach by an officer.

To see the full transcript refer to <https://www.gov.mb.ca/justice/lera/hearings/index.html> file 2015/71.

His Honour made comment about the legality of detaining the complainant on the basis of a witness's description of the suspects in the reported break and enter.

The reasons provided by Officer 1 for the detention of the complainant were that the complainant may have been involved the break and enter offence; based on: proximity to the offence, in time and space; that the complainant was wearing a backpack, which a witness complained the suspects possessed; and the presence of a bicycle which could have allowed the distance between the two areas to be traversed quickly.

His Honour found that the stated reasons, did not constitute a basis in law for investigative detention and Officer 1 was in error when he detained and ultimately searched the accused and his belongings. In short, he committed a breach of the *Charter*.

His Honour continued by reference *Quebec c. Girard*, (2002) C.C.S. No. 1190, a *Charter* breach does not automatically equate to an abuse of authority; it must have an "element of excess". The actions of the police must be reprehensible or excessive.

His Honour went on, in reference to Joyal J. in *A.C. v. G.S.*, LERA complaint #6100, at para. 52:

"police conduct which can be properly found as an "abuse of authority" is that exploitative conduct which, even after an examination of the factual context of a given case, cannot be viewed as consistent with a reasonable police officer's good faith intention to lawfully perform his duties and uphold the public trust".

His Honour continued with reference to J.W.P. and Cst. R.L., LERA complaint #3704, at tab 17 of the Respondent's brief, Chartier, PJ (as he then was) draws a distinction between a *Charter* breach that amounts to a professional error, in that case a breach of Section 10, as opposed to a *Charter* breach which constitutes an abuse of authority. His Honour said,

"I find that it was open to the Commissioner to conclude, as he implicitly did, that the conduct in question amounted to a good faith, albeit as I have found it, flawed exercise of duty, and did not reach the standard of abuse of authority."

DECISION: “Considering that the onus of proof is on the Complainant, and after having reviewed the circumstances upon which the Commissioner reached the decision, I am of the view that the Commissioner’s decision to take no further action was reasonable in the circumstances, and therefore he did not err in that regard.”

* * * * *

- An adult male, hereinafter referred to as the complainant, was arrested outside a hotel following an altercation with a bouncer. The bouncer, according to the complainant, came outside and took him to the ground but he managed to free himself and hit the bouncer twice. Someone else intervened leading to his arrest.

The complainant said that he was cooperative with police when they arrived, but they “roughed him up” after restraining him with handcuffs. He alleged that an officer tried to spray him with what he described as “mace”. The complainant screamed at them saying he was on anti-psychotic medication and listed the medications. Once at the “drunk tank” the officers kicked him in the head and tried opening doors by banging his head against them. He thought they must have been driving around for a while and then stopped, took him out of the car and applied leg shackles and a spit sock (a device to prevent a suspect from spitting on officers). He said the handcuffs were too tight and the driver slammed on the brakes causing him to hit his face on the plexi glass protective shield. The officers continued to assault him after arrival at the “drunk tank”.

Witnesses were interviewed who described the complainant’s behaviour at the bar as strange. He created a disturbance leading to his departure from the premises. Outside the physical altercation with the bouncer occurred in which the complainant tried to gouge the bouncer’s eyes with his thumbs. The bartender received a broken nose, scrapes, bruises, swollen cheekbone, a sore jaw, a black left eye and a sore ankle. Other patrons helped hold him while awaiting police arrival. The bar staff was of the belief that the complainant, in consuming alcohol, either combined it with drugs, or failed to take prescribed medication.

The LERA investigator, in reviewing the police documentation and the officer’s account of the incident, when interviewed, found it to contrast immensely with the complainant’s allegations. The officers agreed that a level of force was required for the complainant’s arrest but denied allegations of misconduct. They acknowledged that the complainant may have asked to have the handcuffs loosened but they did not comply based on his unpredictable, uncooperative violent behaviour, threats toward them and the fact that he tried to slip the handcuffs from behind his back to the front of his body.

The officers explained that the injuries he received were not surprising, given his physical confrontation with hotel staff prior to their arrival and his being pinned to the ground by several persons while awaiting for police arrival. He refused to stand or be of any assistance in moving to the police vehicle as the officers were left to carry his “dead weight”. It was obvious to the officers that the complainant had consumed a lot of alcohol and he confirmed that he had ingested a quantity of Cocaine. The officers adamantly denied attempting to spray “mace”. They explained that spraying pepper spray in the vehicle would render it inoperable until it was decontaminated. They simply would not take such action. They said the complainant was spitting on the protective shield that separates the back and front seats, but a spit sock was not

applied. Likewise, they denied that the brakes were applied with significant force, so as to cause him to fly into the protective shield.

The officers advised that the complainant was given his notice of arrest, the police caution and his rights under The Canadian Charter of Rights and Freedoms immediately following being placed in the back seat of the police vehicle in the hotel parking lot.

The officers describe their arrival at the police station, with the complainant refusing to get out of the car, bracing himself with one foot on either side of the doorframe. After some struggling, they finally were able to pull him out by the legs.

The complainant had also alleged that the officers, in repositioning his arms, kicked him in the hands. The officers said that they had used only their hands in repositioning his arms. Contrary to other allegations made, the officers vehemently denied dragging the complainant into the police station banging his head on the doorframe and rubbing his face back and forth on the concrete wall.

Once left alone in a holding room, the complainant responded by kicking and throwing himself against the door. The police response was to re-enter the room and apply shackles to his feet to prevent him from injuring himself.

A medical report was obtained with the complainants medical problems documented as depression and anxiety. He indicated to the medical staff that he had taken prescription medications and consumed beer and shooters, but denied taking any other substances.

The injuries noted were sore wrists apparently caused by handcuffs, bruising to the right side of his face/head with multiple cuts and abrasions to his hands and arms. He explained that blood on his pants was from “the other guy.” A CT scan and X-rays were conducted resulting in a finding of no abnormalities.

The bouncer, when interviewed, advised that he sustained a broken nose, scrapes, bruises, swollen cheekbone, a sore jaw, a black left eye and a sore ankle. He described the complainant as not being normal, very aggressive all night, very hyperactive, yelling, and seemingly not concerned about consequences. He thought the complainant was intoxicated by alcohol but also suspected that he was high on some other drug(s) and/or possibly not taking prescribed medication.

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. 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 complainant failed to appear as required on two successive dates and the Provincial Court Judge dismissed the matter.

* * * * *

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.

- An adult male, hereinafter referred to as the complainant, filed a complaint with LERA about the conduct of two police officers, members of a police service in Manitoba.

It should be first noted that in the early evening, officers not otherwise involved in the incident leading to this complaint, abandoned pursuit of a truck when it became a public safety issue. All patrols were alerted to be on the lookout for the truck. The truck, a Grey, 2005 Ford F250 Super Duty XLT Crew Cab bearing Manitoba Licence plates, was similar to the truck driven by the complainant when stopped by police later the same evening.

The complainant left his residence for work intending to pick up a coffee at a nearby coffee shop. He was driving a truck owned and registered to his father, a 2003 Ford F250 Turbo Diesel Crew Cab, Grey in colour bearing Manitoba Licence Plates.

He entered the coffee shop drive through with no vehicles in front or behind him. After placing his order, he drove to the pick up window and while retrieving his debit card from his pocket, two unidentified males appeared from the corner of the building directly in front of his truck; both had handguns drawn and pointed directly at him. The two men, as he would learn after he was arrested were plain-clothes police officers.

The officers grabbed and dragged him from the vehicle onto the ground, as they shouted directions with the use of unflattering names and other offensive language. In his statement, the complainant said he was terrified and carefully followed their instructions. In the process of removing him from the truck, he was grabbed and his shirt ripped off. Once facedown on the ground, he alleges that a knee was very firmly planted on the back of his neck. He was kicked in the lower back and twice punched in the face.

The officers picked him up, carrying him to the corner of the building while smashing his head against a marked police cruiser. He heard approaching sirens and requested to know why he was being arrested. As he was thrown in the back of the cruiser, he was told that he failed to stop when the lights were flashed at him.

With the arrival of backup officers including a supervisor, he was advised, that the licence plate on the truck he was driving was queried on the police computer system and it was on file as reported stolen. The complainant explained, that in fact the truck had been stolen, but that was several months earlier and the police had not removed it from their system as required.

The two arresting officers told the complainant, that they observed the truck he was driving, a Grey Ford F250 Super Duty XLT crew cab, travelling in the same direction a little ahead of them. The complainant's vehicle, closely matching the one that had earlier eluded police, prompted the officers to query the licence plate, which came back as a stolen vehicle. They did not verify that the plate number matched the plate from the earlier chase; they just assumed that they were one and the same.

The officers, when later interviewed by the LERA investigator, said that when they pulled into the coffee shop parking lot, to prevent the vehicle from escaping out the drive through, they parked around the corner out of sight of the complainant's vehicle. They also placed a "stop stick" across the exit of the drive-through.

The officers explained that they removed their service pistols from the holsters and gave loud verbal commands to the driver to put his hands up. The driver and only occupant of the vehicle (complainant) did not immediately comply and actually, lowered his right hand out of sight, leading them to suspect he may be reaching for a weapon or possibly be going to target them with the truck.

One officer went to the passenger side of the vehicle, opening the door and giving loud verbal commands to the driver to exit the vehicle. The driver made no attempt to comply, however, by this time the officer could see that the complainant was not holding a weapon. The officers holstered their service pistols.

The first officer reached into the vehicle, attempting to remove the complainant by grabbing him by the shirt. The complainant, according to the officers, at this point became defensive and resistant by pulling away, thus ripping his shirt. The officers grabbed the complainant, one arm each and dragged him from the vehicle to the ground. The officers, when interviewed, confirmed that the complainant was punched in the face in order to gain control over him. However, they denied kicking him.

The complainant made four visits to the medical clinic within the next three weeks for treatment of pain in various parts of his body, inability to bend his left leg, bruising, swelling and pain around his left eye. The injuries were diagnosed as being caused by blunt trauma. There were broken bones or internal injuries. He was on sick leave from work for approximately twenty-nine days.

The LERA investigator, conducted interviews with staff at the coffee shop with one worker advising that she saw a man order a coffee in the drive-thru and pulled up to the window. When she went to the window to take his money, she saw a police officer outside of his truck with his gun pointed at him telling him to raise his hands. She saw the man raise his hands, which scared her causing her to run to the back of the store. She said she did not see anything else. Other staff said they did not witness the incident. The manager confirmed with the investigator that no video/audio equipment was in place to have recorded the incident.

The officers that arrived later did not witness any of the arrest process. It was confirmed by the officers that the truck driven by the complainant should have been removed from the computer system earlier but in error was not.

The complainant also advised that a watch received as a gift from his father was lost during the arrest. He returned and searched for it but was unable to locate it.

The role of the Commissioner is to examine the information gathered in the investigation and determine if there is sufficient evidence supporting the complaint to justify bringing the matter to a public hearing. The Commissioner is not to weigh the evidence, only determine the sufficiency of the evidence supporting the complaint.

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:

Both arresting officers, abused their authority by:

- *using unnecessary violence or excessive force, contrary to subsection 29(a)(ii) of The Law Enforcement Review Act; and*
- *using oppressive or abusive conduct or language, contrary to subsection 29(a) (iii) of The Law Enforcement Review Act.*

DECISION: The complainant, on two occasions, failed to appear before a Provincial Court Judge for the purpose of setting a hearing date. On the second occasion, Provincial Court Judge Huberdeau dismissed the matter.

* * * * *

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

- An adult female, herein after referred to as the complainant, filed a third party complaint on behalf of an adult male friend, who struggles with addictions and mental health issues. He was twice arrested within a short period after becoming the subject of multiple police investigations. The complainant, having been a close friend for several years, was very much trusted by him and relied on her guidance.

The second arrest was made without force and with no injuries; however, police had surrounded the residence and evacuated neighbours in preparation. The complainant felt that the officers, in preparing to effect the arrest while being aware of his mental health issues, failed to give them appropriate consideration. By using different tactics, the “standoff” would have been unnecessary, in the complainant’s opinion. She believed that her friend would have cooperated if the police had just walked up to the door and knocked.

The complainant was concerned that her friend was negatively affected by the police tactics used in the arrest, because they drew the attention of the media and everyone in the area knew who was involved.

The complainant was advised that The Law Enforcement Review Agency (LERA) investigates conduct complaints against on duty municipal police officers. The complaint must identify a disciplinary default as defined in Section 29 of *The Law Enforcement Review Act (the Act)*. LERA does not investigate complaints made about the quality of the police service, including decisions/tactics on police investigations, or training matters. Those matters are service issues and the Chief of Police is ultimately responsible, for the training of the officers and the quality of service provided by them.

DECISION: The complainant’s concerns are directly related to decisions made and tactics employed by the police officers in planning for and executing the arrest. 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 her 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:

- An adult male, hereinafter referred to as the complainant, made several complaints within a relatively short period about local police officers. The complaints were closed as the commissioner was satisfied that there was insufficient evidence to justify their referral to a hearing under the Act. In two of the complaints, the complainant requested reviews before a provincial judge and in both cases the judge conducting the review, held that the commissioner had not erred in his decisions.

A short time later, the complainant filed another complaint, that included the same incidents and officers involved in the previous complaints.

DECISION: The commissioner found the complaint to be vexatious and declined to take further action, as the alleged defaults had already been properly addressed under the Act.

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. In some instances the complainant fails to keep in touch with the Law Enforcement Review Agency and cannot be located. When this occurs, correspondence to the complainant is forwarded to the last address contained in the Commissioner's records, advising that failure to contact LERA within 30 days will result in the closing of the matter.

In 2017, there were a total of 42 files closed as a result of being abandoned or withdrawn.

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 an example of a complaint resolved informally in 2017:

- The complainant, an adult male I will refer to as Sam Sr., was arrested by a Sergeant (Sgt.) of the police service having jurisdiction. He complained that the officer:
 - Arrested him without reasonable or probable grounds;
 - Used unnecessary force by using a taser;
 - Violated his privacy by lodging him in a cell, where his use of toilet facilities was in view of unauthorized persons and subject to video recording;
 - Used oppressive or abusive conduct, by holding him for 22 or 23 hours, with two others, in a cell designed for two, with inadequate heat, not enough mattresses or blankets, bright lights that were never dimmed, without toilet paper and not properly fed; and
 - Improperly disclosing private information about his arrest to hospital staff.

Sam Sr., when interviewed by the LERA investigator, provided additional information. He said that at approximately, 1:00 AM he learned through several text messages, that his son, Sam Jr. was being beaten by one or more persons at a residence. Sam Sr., along with his wife and daughter, drove to the residence and upon arrival confirmed that Sam Jr. was the victim of a serious assault and was taken to hospital by ambulance.

While still in the area of the residence, but prior to police arrival, Sam Sr. entered a second residence to check on another family member that may have also been assaulted. Eventually, the Sgt. arrived and told Sam Sr. he was under arrest, instructing him to put his arms behind his back to facilitate applying handcuffs. Sam Sr. wanted to go to the hospital to check on his son, so he pulled away and attempted to run to his vehicle. While running, he was twice tasered by the Sgt., so he submitted and was incarcerated at the police station.

When interviewed by the LERA investigator, the Sgt. explained that he was called to respond to an alleged assault on Sam Jr., in the early morning. Upon arrival, other officers were already on scene so they met and briefed the Sgt. on the investigation. The officers said there had been a complaint that Sam Sr., unlawfully, entered a residence, assaulted a person, and damaged personal property with the use of a baseball bat he had taken with him to the house. Subsequently, Sam Sr. was charged with related offences and resisting arrest.

The Sgt. advised that he has known Sam Sr. for many years and was aware that he is easily agitated and responds in a belligerent manner. He had been previously charged for violent

offences, had ready access to knives and firearms and already had a criminal record for resisting arrest.

It was learned that when Sam Sr. came to the residence, before the Sgt's arrival, he was accompanied by three other is in the vehicle, bringing the total number present to eleven, seven civilians plus four police officers. The seven non-police were either intoxicated and/or agitated and belligerent. While two officers were in the process of arresting the men involved in the assault on Sam Jr., the Sgt. approached Sam Sr. to arrest him.

Sam Sr. had an unknown object in one hand and made a move to strike the officer. The Sgt. warned him that he would Taser him if he did not stop and as he removed the Taser from its holder, Sam Sr. began running toward his truck. Sam Sr's spouse was in the driver's seat, revving the engine and spinning tires. It appeared to the Sgt. that she was repositioning the truck for Sam Sr. to get in. The Sgt. had no way of knowing if he was trying to flee or attempting to access a weapon from the vehicle. The Sgt. tasered him once on the back and once on the leg and he was arrested without further problems.

When interviewed by the LERA investigator, the Sgt. also responded to the other allegations made by Sam Sr. At the time of this incident, there were more prisoners in the police lockup than available cell space. The prisoners already in custody could not be released due to the seriousness of the charges against them, which led to overcrowding. With too many prisoners, all available mattresses and blankets were taken, but as a result of this incident, more have now been purchased. Only one roll of toilet paper is left in a cell at any particular time and as nobody requested more, the officers did not realize they ran out. For safety reasons, the cells are wired for video, which requires adequate light in order to properly record. In relation to the feeding of persons in custody, the police service involved is in a rural area and the prisoner meals are dependent on availability in the local store, usually TV dinners heated in a microwave oven.

Following the arrest of Sam Sr., the officers were required to prepare the necessary documentation prior to taking him before a Judicial Justice of the Peace. While doing so, they had to respond to other incoming complaints, which lead to a longer than normal stay in the cells.

The Sgt. denied releasing protected personal information about Sam Sr. to hospital staff. While at the hospital, the doctor enquired of the Sgt., details of the incident leading to Sam Sr's visit, so that he could better diagnose his injuries.

Sam Sr. subsequently entered pleas of guilty to two charges; Obstruction/Resisting a Peace Officer and Forcible Entry. The Crown Prosecutor entered a stay of proceedings on the other charges.

The complainant and the officer mutually agreed to try resolving this matter informally. A meeting was arranged, leading to an exchange between the Sgt. and Sam Sr., wherein they explained the situation from their point of view. Once finished, both were satisfied, shook hands and agreed to put the matter to rest. No further action was required.

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.*

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.

- An adult male, the son of an active police officer, hereinafter referred to as the complainant, reported that in the early morning hours he was the victim of a serious assault. This initial assault is important to this summary for context purposes only.

When the assault occurred, the complainant was handcuffed by security guards at the licensed establishment and thrown to the floor. A security guard mounted him and repeatedly punched him in the face with a leather-gloved fist causing fractures and severe swelling. It should be noted that the security guards are not subject to *The Law Enforcement Review Act*; therefore, their actions are not subject of this complaint. In filing his complaint, he claimed that he was moderately intoxicated at the time of the incident.

The police were called. He was lying on the floor bleeding significantly and either the guards or the police removed the handcuffs and re-applied police handcuffs. He was taken outside and the police officers asked for his wallet and he told them it was in his back pocket. One of the officers removed the wallet as the complainant's phone rang.

The phone was in his front pocket and he answered it. It was his father (off duty police officer) who was calling because he had been advised that the complainant's cousin had been assaulted at the bar. An officer told him to get off the phone and the complainant told him that he was talking to his dad. An officer, according to the complainant grabbed his phone, grabbed him by the throat and slammed him against the police van. He was being choked so forcefully that he could not breathe. While doing this, the officer screamed at him, "You f----- little b-----". His father, still on the phone, heard this being said and then it was disconnected. He was placed into the back caged area of the police van and sat there until his father showed up.

After a few minutes, the back door was opened and his father removed him, took him to an ambulance and his handcuffs were removed so that he could receive treatment. He complained that he was not read his rights under the *Charter*, or told the reason for his arrest.

His complaint against the police officer included: using unnecessary violence or excessive force; using oppressive or abusive conduct or language; being discourteous or uncivil; and failing to assist him. He also made a criminal complaint of assault to the police against the officer.

The criminal investigation takes precedence over the LERA investigation of conduct issues. Therefore, the LERA investigation was placed in abeyance pending the completion of the criminal process.

The complainant was charged with assault causing bodily harm, in relation to the incident that had unfolded prior to security and police being involved. The police officer, following investigation, was criminally charged with assault on the complainant. The charges against the complainant and the police officer were later subject of a stay of proceedings by the Crown.

The LERA matter was then reactivated, however, the complainant advised that he no longer wished to proceed with the complaint against the arresting police officer.

DECISION: As the LERA process is complainant driven, meaning the complainant may withdraw the complaint at any time during the process, the Commissioner closed the file under Section 13(1) (b) of the Act.

Legal Developments

Access to youth records under the *Youth Criminal Justice Act* (“YCJA”) by the Law Enforcement Review Agency (“LERA”).

The *Youth Criminal Justice Act* restricts access to records pertaining to young persons who are dealt with under the youth criminal justice system.

The Law Enforcement Review Agency, as a civilian law enforcement oversight agency, is responsible for investigating complaints regarding police conduct under *The Law Enforcement Review Act*.

In some situations, LERA requires access to youth records under the YCJA in order to conduct an investigation. For example, if a complaint deals with the conduct of an officer in relation to a young person, records under the YCJA pertaining to that young person may be relevant to LERA’s investigation of the complaint.

At present, LERA must apply to the courts on a case-by-case basis in order to access youth records specific to each complaint. However, LERA is actively exploring options to enable it to access youth records more expeditiously in the future.

Statistical Analysis

- LERA's jurisdiction extends to 11 police services with 1,460 police officers. Total population served is 822,361.
- Winnipeg Police Service accounts for 86 per cent of complaints made to LERA. Brandon Police Service accounts for 4.5 per cent and other services account for the remainder.
- There were 190 files opened in 2017, down by 24 complaints from 214 in 2016. The four (4) year average is 213 new files per year.
- The number of formal complaints filed is 109, down 13 from 122 formal complaints in 2016.
- Eighty-one (81) complaints were resolved at intake or after preliminary enquiries, down from 92 in 2016.
- In 2017, there were 222 total investigations. There were 252 investigations in 2016.
- There were 119 investigations completed in 2017, down three (3) from 122 in 2016.
- There were no complaints alleging the misuse of pepper spray in 2017.
- There were four (4) incidents alleging misuse of handcuffs in 2017, down one (1) from five (5) in 2016.
- There were no complaints of misuse of the Taser in 2017.
- Incidents alleging injuries from the use of force decreased to 44, from 60 in 2016. Allegations of injuries were made in 40 per cent of complaints investigated.
- There was one (1) informal resolution of complaints in 2017, up from zero (0) in 2016. LERA continues to actively support and, whenever possible, engage in alternative dispute resolution to restore social harmony between the parties. This method of resolution remains a priority and complainants and respondents are encouraged to use it.
- The percentage of complaints abandoned by complainants increased from 2016. 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 down from 13 to 10 in 2017. The four (4) year average is nine and a half (9.5) . (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 2017, 11 criminal complaints were made after a LERA complaint was also filed. This was down two (2) from 2016. (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 a decrease from nine (9) months in 2016, to eight (8) months in 2017. (See Tables 15 and 16)

- The average age of all complainants was 37. The oldest complainant was 78 and the youngest was 14. (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 1 460 agents de police. Au total, l'Organisme sert 822 361 personnes.
- 86 % des plaintes déposées auprès de l'Organisme concernent le Service de police de Winnipeg, 4,5 % concernent le Service de police de Brandon et les autres services se partagent le reste.
- En 2017, l'Organisme a ouvert 190 dossiers, soit 24 de moins qu'en 2016 (214). La moyenne sur quatre (4) ans s'élève à 213 nouveaux dossiers par année.
- Le nombre de plaintes officielles déposées a été de 109, soit 13 de moins qu'en 2016 (122).
- L'Organisme a pu régler 81 plaintes dès leur réception ou après une enquête préliminaire, comparativement à 92 en 2016.
- En 2017, il y a eu 222 enquêtes. Il y en a eu 252 en 2016.
- En 2017, 119 enquêtes ont été achevées, soit trois (3) de moins qu'en 2016 (122).
- En 2017, aucune plainte n'a été déposée concernant l'utilisation abusive de vaporisateur de poivre.
- Il n'y a pas eu de plaintes portant sur l'utilisation abusive du Taser en 2017.
- Il y a eu quatre (4) incidents relatifs à une utilisation abusive des menottes en 2017, soit un (1) de moins qu'en 2016 (5).
- Les allégations de blessures liées au recours à la force ont baissé, passant de 60 en 2016 à 44. Les allégations de blessures ont représenté 40 % des plaintes ayant fait l'objet d'une enquête.
- Il y a eu un (1) règlement de plainte sans formalités en 2017, alors qu'il n'y en avait pas eu en 2016 (0). 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 augmenté par rapport à 2016. 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, 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 2017, 10 plaignants ont demandé la révision par un juge de la décision du commissaire, soit 13 de moins que l'année précédente. La moyenne sur quatre (4) ans est de neuf et demi (9,5). (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 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 2017, 11 plaintes criminelles ont été déposées après le dépôt d'une plainte auprès de l'Organisme, soit deux (2) de moins qu'en 2016. (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 neuf (9) mois en 2016 à huit (8) mois en 2017. (Voir les tableaux 15 et 16)

- L'âge moyen des plaignants était de 37 ans. Le plaignant le plus âgé avait 78 ans et le plus jeune avait 14 ans. (Voir tableau 18)

2017 Statistical Report – Data Tables

Table 1: Complaints – Listed by Police Service**	Police Officers **	Population ***	2017 (n=109)	2016 (n=122)	2015 (n=139)	2014 (n=138)	2013 (n=117)
Altona	8	5,116	0	0	1 (0.7%)	0	1 (1%)
Brandon	88	48,859	5 (4.5%)	6 (5%)	4 (3%)	11 (8%)	14 (12%)
Dakota Ojibway (DOPS)	36	18,252	2 (2%)	4 (3%)	0	0	2 (2%)
Morden	16	8,668	2 (2%)	1 (1%)	1 (0.7%)	1 (1%)	0
Rivers	3	1,257	1 (1%)	1 (1%)	0	0	0
Ste. Anne	5	2,114	0	1 (1%)	0	0	0
Winkler	19	12,591	1 (1%)	1 (1%)	2 (1.4%)	2 (1.5%)	1 (1%)
Winnipeg****	1,460	705,244	94 (86%)	102 (83%)	128 (92%)	121 (87%)	94 (80%)
RM of Cornwallis*	1	4,520	0	0	0	0	0
RM of Springfield*	3	15,342	0	0	0	0	0
RM of Victoria Beach*	1	398	0	0	0	1 (1%)	0
Other	0	0	4 (3.5%)	6 (5%)	3 (2.2%)	2 (1.5%)	4 (3%)
Total	1,643	822,361	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	2017	2016	2015	2014
Files Opened	190	214	211	237
Resolved at Intake	81	92	72	99
Formal Complaints Received	109	122	139	138

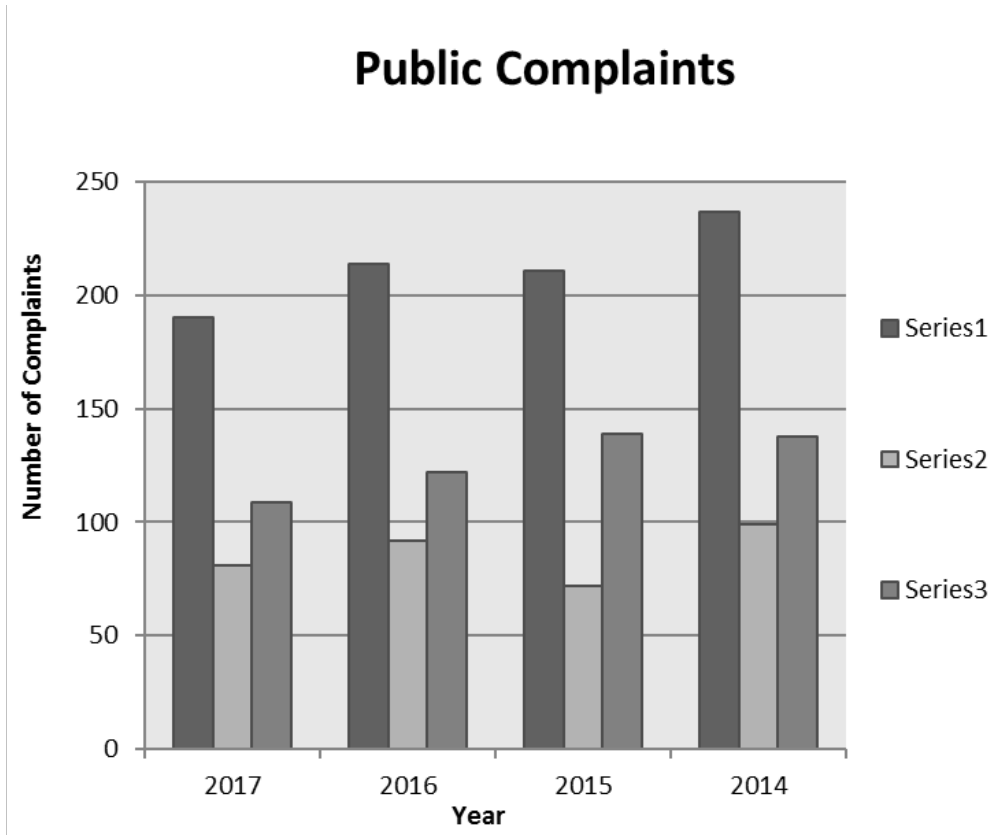


Table 3: Investigations Conducted	2017	2016	2015	2014
Total Investigations	222	252	234	225
Investigations Completed - Files Closed	119	122	92	132
Ongoing Investigations Carried Over as of December 31 st of the year shown	103	130	142	93

Investigations Conducted

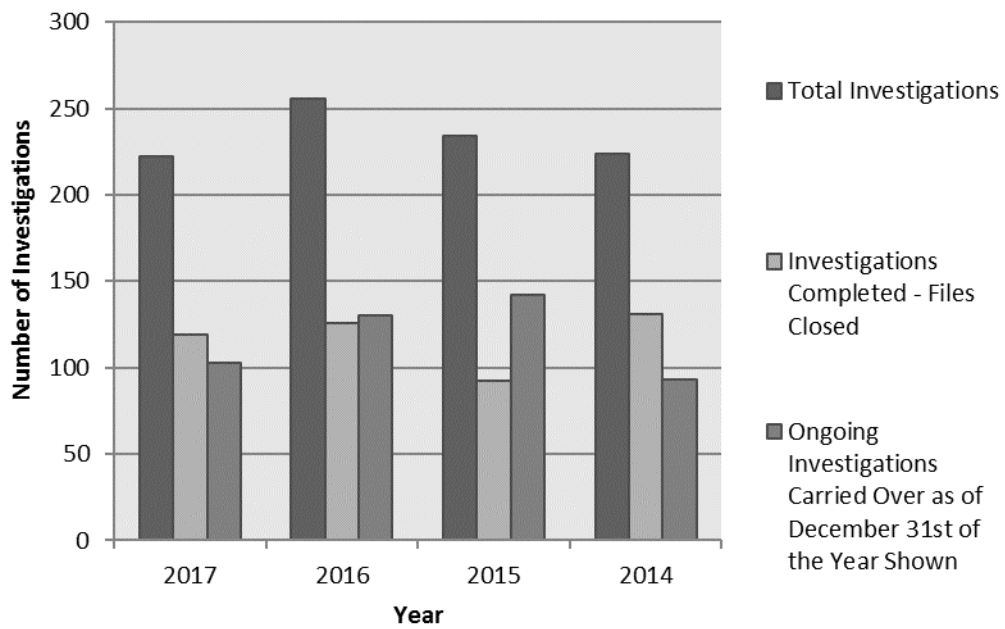


Table 4: Complainants' Allegations: Discipline Code Section 29 <i>The Law Enforcement Review Act</i>	2017	2016	2015	2014
Abuse of authority Subsection 29(a)	45	38	39	34
Arrest without reasonable or probable grounds Subsection 29(a)(i)	14	13	17	19
Using unnecessary or excessive force Subsection 29(a)(ii)	45	62	64	70
Using oppressive or abusive conduct or language Subsection 29(a)(iii)	24	31	47	40
Being discourteous or uncivil Subsection 29 (a)(iv)	34	40	52	49
Seeking improper personal advantage Subsection 29(a)(v)	2	0	1	2
Serving civil documents without proper authorization Subsection 29(a)(vi)	0	0	0	3
Differential treatment without cause Subsection 29(a)(vii) <i>The Human Rights Code</i> Subsection 9(2)	11	12	8	10
Making false statement(s) Subsection 29(b)	3	1	3	8
Improperly disclosing information Subsection 29(c)	0	3	2	1
Failing to exercise care or restraint in use of firearm Subsection 29(d)	0	0	0	1
Damaging property or failing to report damage Subsection 29(e)	3	4	4	4
Failing to provide assistance to person(s) in danger Subsection 29(f)	4	2	0	8
Violating person's privacy (under <i>The Privacy Act</i>) Subsection 29(g))	3	3	4	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)	1	0	0	0

Table 5: Incidents Alleging Misuse of Pepper Spray

2017 (n=0)	2016 (n=0)	2015 (n=0)	2014 (n=0)
0% of 109 Complaints investigated	0% of 122 complaints investigated	0% of 139 complaints investigated	0% of 138 complaints investigated

Table 6: Incidents Alleging Misuse of Handcuffs

2017 (n=4)	2016 (n=5)	2015 (n=10)	2014 (n=4)
4% of 109 complaints investigated Winnipeg PS = 3 Dakota Ojibway PS = 1	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

Table 7: Incidents Alleging Misuse of Taser

2017 (n=0)	2016 (n=4)	2015 (n=0)	2014 (n=1)
0% of 109 Complaints investigated	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

Table 8: Incidents Alleging Injuries from Use of Force

2017 (n=44)	2016 (n=60)	2015 (n=61)	2014 (n=66)
40% of 109 Complaints investigated Winnipeg PS = 39 Morden PS = 2 Dakota Ojibway PS = 1 Brandon PS = 2	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

	2017 (n=119)	2016 (n =126)	2015 (n=92)	2014 (n=132)
Dismissed by commissioner as outside scope of act	25 (21%)	27 (21%)	17 (18%)	17 (13%)
Dismissed by commissioner as frivolous or vexatious	1 (1%)	1 (1%)	0	1 (1%)
Dismissed by commissioner as not supported by sufficient evidence to justify a hearing	50 (42%)	67 (53%)	20 (22%)	48 (36%)
Abandoned or withdrawn by complainant	42 (35%)	29 (23%)	52 (57%)	60 (46%)
Resolved informally	1 (1%)	0	1 (1%)	4 (2%)
Public hearing before a provincial court judge	0	2 (2%)	1 (1%)	1 (1%)
Admission of guilt by respondent officer	0	0	0	0
Disposed via criminal Procedure	0	0	1 (1%)	1 (1%)

Table 10: Legal Involvement of Complainants	2017 (n=109)	2016 (n=122)	2015 (n=139)	2014 (n=137)
No charges	40 (36%)	39 (32%)	59 (42%)	63 (45%)
Traffic offences	16 (14%)	12 (10%)	23 (17%)	16 (12%)
Property offences	2 (2%)	5 (4%)	0	3 (2%)
Intoxicated persons detention	4 (4%)	4 (3%)	4 (3%)	8 (6%)
Cause disturbance	0	0	1 (1%)	1 (1%)
Assault police officer/resist arrest	11 (10%)	13 (11%)	17 (12%)	20 (14%)
Impaired driving	1 (1%)	3 (2%)	3 (2%)	1 (1%)
Offences against another person	5 (5%)	5 (4%)	7 (5%)	5 (4%)
Domestic disputes	0	1 (1%)	1 (1%)	3 (2%)
Drugs	2 (2%)	1 (1%)	5 (4%)	0
<i>The Mental Health Act</i>	4 (4%)	6 (5%)	3 (2%)	4 (3%)
Breach of Peace	1 (1%)	0	0	0
Other	23 (21%)	33 (27%)	16 (11%)	14 (10%)

Table 11: Provincial Judges' Review of Commissioner's Decision to Take No Further Action	2017	2016	2015	2014
	10	13	6	9

Table 12: Referrals by Commissioner of Complaint for Criminal Investigation	2017	2016	2015	2014
	0	1	1	0

Table 13: Complainants Have Also Lodged a Criminal Complaint with Police	2017	2016	2015	2014
	11	13	6	13

**Table 14: Time Span of Ongoing Investigations Carried Over
as of December 31, 2017**

YEAR	1-3 Months	4-7 Months	8-12 Months	13-18 Months	19-23 Months	24+ Months	Total
2011	0	0	0	0	0	1	1
2012	0	0	0	0	0	1	1
2013	0	0	0	0	0	1	1
2014	0	0	0	0	0	9	29
2015	0	0	0	0	0	16	16
2016	0	0	0	18	6	1	25
2017	28	11	11	0	0	0	50
Total	28	11	11	18	6	29	103

Table 15: Files Concluded in 2017 by Year of Origin

Year	Number of Files	Average Time to Close Investigation
2009	1	18 months
2014	6	15 months
2015	27	18 months
2016	26	7 months
2017	59	2 months
Total	119	8 months

Table 16: Length of Time to Complete Investigations	2017	2016	2015	2014	2013
Average Number of Months	8	9	7	6	8

Average Number of Months to Complete Investigation

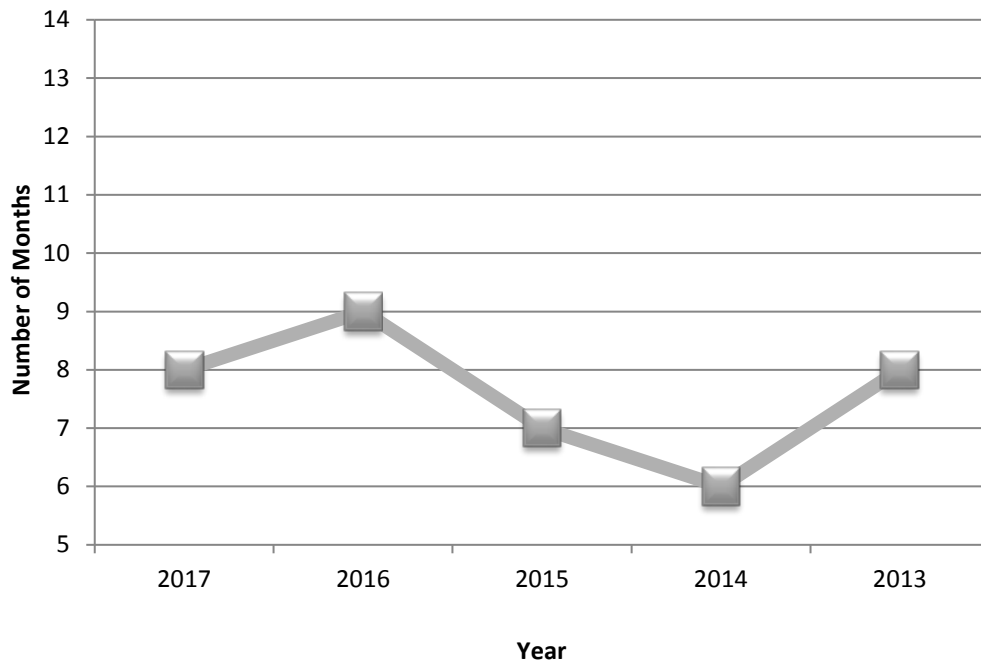


Table 17: Location of Incident	2017 (n=109)	2016 (n=122)	2015 (n=139)	2014 (n=137)	2013 (n=117)
Street	41	34	49	48	38
Private residence	35	51	50	44	29
Public building/place	5	7	11	16	9
Police station	13	14	8	19	14
Other	15	16	21	11	27

Location of Incident

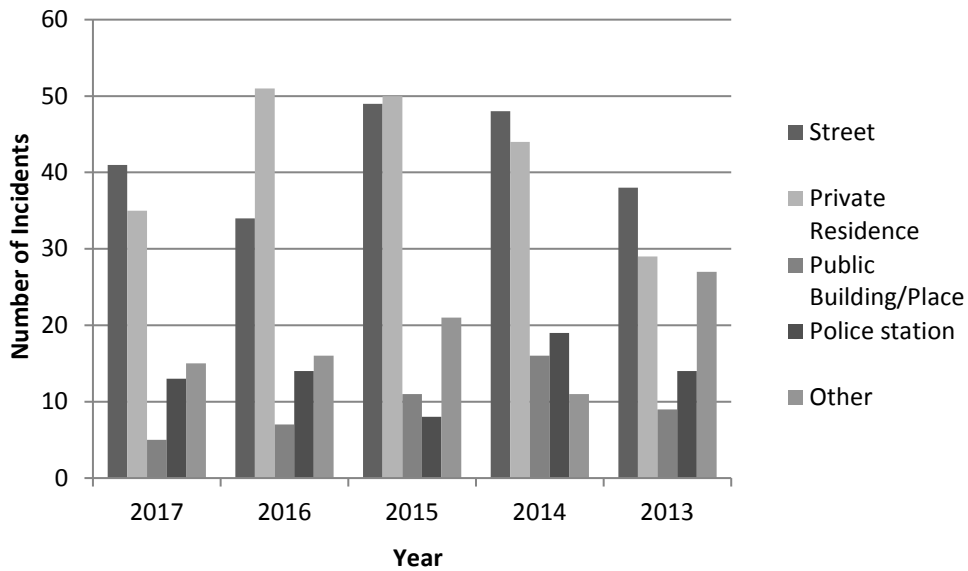


Table 18: Complainant Demographics

SEX	2017 (n=109)	2016 (n=122)	2015 (n=139)	2014 (n=138)	2013 (n=117)
Male	73 (67%)	83 (68%)	86 (62%)	94 (68%)	79 (67%)
Female	35 (32%)	39 (32%)	53 (38%)	44 (32%)	36 (31%)
Sex Unknown	1 (1%)	0	0	0	2 (2%)
AGE	2017 (n=109)	2016 (n=122)	2015 (n=139)	2014 (n=137)	2013 (n=117)
Over 50	23 (21%)	18 (15%)	32 (23%)	27 (20%)	22 (19%)
40 - 49	10 (9%)	21 (17%)	22 (16%)	32 (23%)	21 (18%)
30 - 39	21 (19%)	26 (21%)	32 (23%)	30 (22%)	24 (20.5%)
18 – 29	18 (17%)	22 (18%)	27 (19%)	28 (20%)	23 (19.5%)
Youth under 18	19 (17%)	20 (16%)	18 (13%)	11 (8%)	6 (5%)
Birth Dates Unknown	18 (17%)	15 (12%)	8 (6%)	10 (7%)	21 (18%)
Average Age	37	25	36	38	40
Oldest Complainant	78	66	82	82	74
Youngest Complainant	14	13	14	14	15

