

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

Annual Report
2009





**ATTORNEY GENERAL
MINISTER OF JUSTICE**

Room 104
Legislative Building
Winnipeg, Manitoba, CANADA
R3C 0V8

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

MAY IT PLEASE YOUR HONOUR:

It is my pleasure to present the *2009 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, 2009.

Respectfully submitted,

A handwritten signature in blue ink that reads "Andrew Swan".

Honourable Andrew Swan

Justice

Law Enforcement Review Agency (LERA)
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www.gov.mb.ca/justice/lera

The Honourable Andrew Swan
Minister of Justice
Attorney General

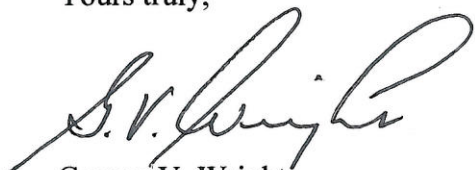
Dear Minister:

Pursuant to Section 45 of *The Law Enforcement Review Act*, I am pleased to present the Law Enforcement Review Agency's twenty-fifth annual report for the period of January 1, 2009, to December 31, 2009.

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 complainant and the respondent police officer(s).
- ensure that the conduct of police officers is consistent with the rule of law and the ideas of a democratic and open society.

Yours truly,



George V. Wright
Commissioner

Résumé en français

- La compétence de l'Organisme chargé des enquêtes sur l'application de la loi (OCEAL) s'étend à 12 services de police, ce qui représente 1 476 policiers. Au total, l'organisme sert 735 829 personnes.
- Un total de 92 % des plaintes déposées auprès de l'OCEAL concernent le Service de police de Winnipeg. Vient ensuite le Service de police de Brandon, avec 3,5 %, les autres forces se partageant le reste.
- L'OCEAL a ouvert 297 dossiers en 2009. Cela représente une augmentation de 45 plaintes par rapport à 2008. La moyenne annuelle des cinq dernières années s'élève à 320 nouveaux dossiers par année.
- Un total de 169 plaintes officielles ont été déposées, comparativement à 155 en 2008. Ce chiffre reste plus élevé que le nombre de dossiers pour lesquels des plaintes officielles n'ont jamais été reçues ou qui ont été classées après une enquête préliminaire (128 plaintes).
- En 2008, il y en a eu 367 enquêtes au total. En 2009, 321 enquêtes ont été menées, soit 46 de moins que l'année précédente. Il y a eu une baisse du nombre d'enquêtes terminées en 2009, c'est-à-dire une baisse de 25 enquêtes pour un total de 189 enquêtes terminées.
- Il y a eu une diminution du nombre d'allégations de fautes disciplinaires enregistrées dans quatre des grandes catégories : abus de pouvoir, comportement ou propos oppressifs ou excessifs, usage de violence gratuite ou de force excessive, et comportement discourtois ou impoli.
- Il n'y a eu aucune plainte mettant en cause l'usage abusif de gaz poivré en 2009. Toutefois, il y a eu quatre plaintes portant sur l'utilisation abusive du Taser.
- Il y a eu 14 incidents relatifs à une utilisation abusive des menottes en 2008, soit trois de moins qu'en 2007.
- Le nombre d'allégations de blessures liées au recours à la force est tombé à 71, soit 42 % du nombre de plaintes pour lesquelles il y a eu enquête.
- Il y a eu deux résolutions sans formalités en 2009, comparativement à quatre en 2008. L'OCEAL continue de soutenir activement le règlement extrajudiciaire des différends qui vise à rétablir l'harmonie sociale entre les parties concernées et il y participe dans la mesure du possible. Cette méthode de règlement reste prioritaire, et plaignants et défendeurs sont encouragés à participer à ce processus.
- Le pourcentage de plaintes abandonnées par les plaignants a diminué par rapport à 2008. Les enquêteurs de l'OCEAL communiquent avec les plaignants une fois l'enquête terminée, mais avant qu'une lettre finale ne soit rédigée. Dans bien des cas, lorsque les plaignants voient les résultats de l'enquête, ils abandonnent la plainte. Dans d'autres cas, quand un enquêteur de l'OCEAL n'a pas pu trouver le plaignant, une lettre est envoyée à sa dernière adresse connue pour lui demander de communiquer avec l'enquêteur. Si aucun contact n'est pris dans un délai de 30 jours, la plainte est considérée comme étant abandonnée, et une lettre recommandée est envoyée à cet effet. (Voir le tableau 9)
- Un total de 21 plaignants ont demandé la révision par des juges de la décision du commissaire, soit le même nombre qu'en 2008. La moyenne sur cinq ans est de 15. (Voir tableau 11)
- L'OCEAL n'effectue aucune enquête criminelle. Lorsqu'une affaire révèle qu'un acte criminel a peut-être été commis, le commissaire ou le juge de la Cour provinciale doivent le signaler au

procureur général, et une enquête criminelle est entreprise. Il y a eu davantage d'enquêtes criminelles demandées par les plaignants en 2009 qu'en 2008.

S'il y a indication d'acte criminel, les enquêteurs de l'OCEAL signalent au plaignant qu'une plainte au criminel pourrait également déposée auprès de la force de police concernée. En 2009, 14 plaintes déposées auprès de l'OCEAL ont été suivies d'une plainte déposée au criminel, soit cinq de plus qu'en 2008. (Voir tableaux 12 et 13)

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

Le traitement complet des enquêtes dans un délai raisonnable est un souci majeur depuis de nombreuses années. L'investissement dans les ressources humaines effectué par le gouvernement ces dernières années a eu des effets positifs certains puisque le délai de traitement et de résolution a **diminué**, passant de 13 mois en 2008 à 9 mois en 2009. Cette tendance devrait se poursuivre. (Voir tableaux 15 et 16)

- L'âge moyen des plaignants était de 32 ans. Le plus âgé avait 72 ans et le plus jeune 12 ans. (Voir tableau 18)

TABLE OF CONTENTS

TITLE	PAGE
Introduction	11
LERA’s Mission Statement	11
About LERA	11
What is LERA?	11
To whom does the act apply?	11
What does LERA investigate?	11
Who are complainants and respondents?	12
How is a complaint filed?	12
Are there time limits?	12
How is a complaint investigated?	12
How is a complaint screened?	12
Does a complainant need a lawyer?	13
How is a complaint resolved?	13
LERA as an Agency	14
How to Reach the Law Enforcement Review Agency	14
Website Overview	14
Organizational Structure	15
Activities	16
Acknowledgements	18
Case Summaries	19
Commissioner’s Decision to Take No Further Action.....	19
Provincial Judges’ Reviews of Commissioner’s Decision to Take No Further Action	21
Informal Resolution of Complaints	23
Public Hearings Before a Provincial Judge.....	24
Contributing Causes	27
Statistical Analysis	28
2009 Statistical Report – Data Tables	30
Table 1: Complaints Listed by Police Service.....	30
Table 2: Public Complaints	31
Table 3: Investigations Conducted.....	32
Table 4: Complainant’s Allegations	33
Table 5: Incidents Alleging Misuse of Pepper Spray.....	34

Table 6:	Incidents Alleging Misuse of Handcuffs	34
Table 7:	Incidents Alleging Misuse of Taser	34
Table 8:	Incidents Alleging Injuries from Use of Force.....	34
Table 9:	Disposition of Complaints	35
Table 10:	Legal Involvement of Complainants.....	36
Table 11:	Provincial Judges' Reviews of Commissioner's Decision to Take No Further Action.....	37
Table 12:	Referrals of Complaint to Crown for Criminal Investigation.....	37
Table 13:	Complainants Have Also Lodged a Criminal Complaint With Police	37
Table 14:	Time Span of Ongoing Investigations Carried Over as of December 31, 2009	38
Table 15:	Files Concluded in 2009 by Year of Origin	38
Table 16:	Length of Time to Complete Investigations.....	39
Table 17:	Location of Incident	40
Table 18:	Complainant Demographics.....	41

INTRODUCTION

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

LERA'S Mission Statement

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

About LERA

What is LERA?

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

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

To whom does the act apply?

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

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

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

What does LERA investigate?

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

- abuse of 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
 - differential treatment without reasonable cause on the basis of any characteristic set out in subsection 9(2) of *The Human Rights Code*

- making a false statement or destroying, concealing or altering any official document or record
- improperly disclosing any information acquired as a member of the police department
- failing to exercise discretion or restraint in the use and care of firearms
- damaging property or failing to report the damage
- failing to help where there is a clear danger to the safety of a person or property
- violating the privacy of any person under *The Privacy Act*
- breaching any part of *The Law Enforcement Review Act* that does not already specify a penalty for the violation
- helping, counselling or causing any police officer to commit officer misconduct

Who are complainants and respondents?

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

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

How is a complaint filed?

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

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

Are there time limits?

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

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

How is a complaint investigated?

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

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

How is a complaint screened?

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

- the alleged conduct does not fall within the scope of misconduct covered by the act

- the complaint is frivolous or vexatious
- the complaint has been abandoned by the complainant
- there is not enough evidence to justify referring the complaint to a provincial judge for a public hearing

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

Does a complainant need a lawyer?

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

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

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

How is a complaint resolved?

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

Informal Resolution:

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

Admission of Disciplinary Default:

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

Referral to Judge for Hearing:

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

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

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

LERA as an Agency

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

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

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

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

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

How To Reach the Law Enforcement Review Agency

By Mail:

420-155 Carlton Street
Winnipeg MB R3C 3H8

By Phone:

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

By Fax:

204-948-1014

By E-mail:

lera@gov.mb.ca

Visit Our Website

www.gov.mb.ca/justice/lera

Website Overview – 2009

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

2009 Web Trends Report:

Visitors.....31,252
Pages viewed30,783
Average pages viewed per day.....84
Documents downloaded:

- Complaint Form.....347
- Annual Report9,698
- Decisions.....59,843

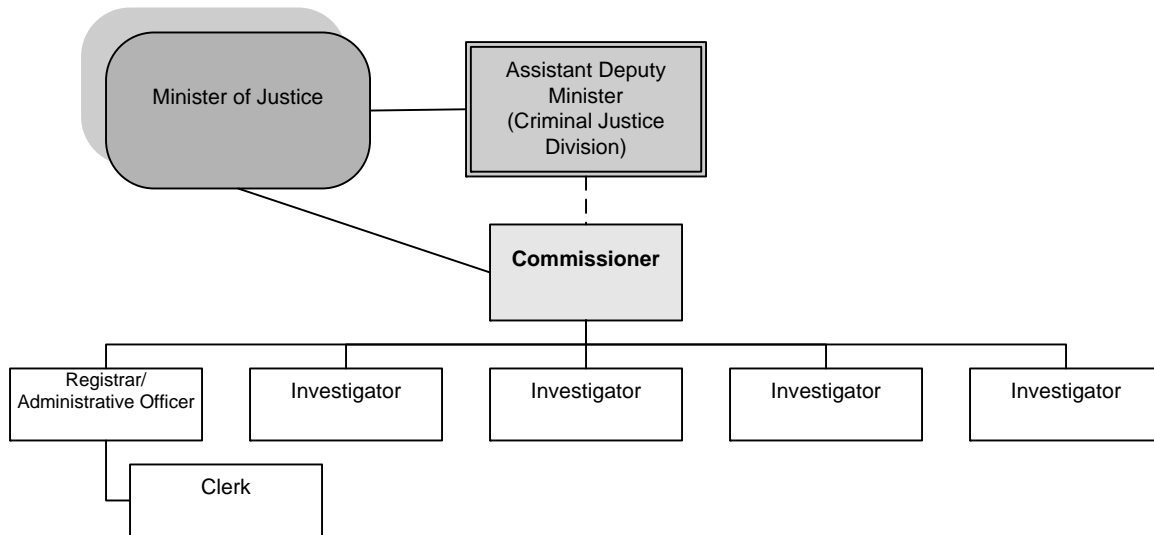
Organizational Structure

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

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

LERA's budget for the financial year beginning April 1, 2009 and ending March 31, 2010 is:

Full Time Employees	7
	\$(000's)
Total Salaries	\$514
Total Operating Budget	<u>\$103</u>
TOTAL	\$617



Activities

During the year, the commissioner and/or staff:

- participated in meetings with the minister of justice and deputy minister of justice
- participated in meetings with the assistant deputy minister of justice, Criminal Justice Division
- participated in meetings and discussions with police executives, police associations, members of police services and municipal officials
- attended reviews of the commissioner's decisions and public hearings presided over by a provincial judge acting *persona designata*
- participated in Manitoba Bar Association Law Day open house at Manitoba Law Courts Complex
- made a presentation to Brandon Police Service members on *The Law Enforcement Review Act*
- attended graduation ceremonies for Winnipeg Police Service recruit classes
- attended Ontario Ombudsman's lecture at Mount Carmel Clinic
- met with executive director and chair of the Manitoba Human Rights Commission
- attended Manitoba Organization and Staff Development training courses
- attended meeting on UN Convention on the Rights of Persons with Disabilities
- participated in various media interviews
- received the director of justice and staff, Southern Chief's Organization
- received the director, Office of the Independent Police Review Director, Ontario
- received the chair of the Alberta Law Enforcement Review Board
- presented to students taking Criminal Justice Studies at the University of Winnipeg
- met with Manitoba Ombudsman and staff
- presented to Dakota Ojibway Police Service at Sioux Valley First Nation
- attended 4th Annual Manitoba Council of Administrative Tribunals Conference (MCAT)
- attended 8th Annual Keeping the Fires Burning event at Winnipeg Convention Centre
- attended Manitoba Metis Federation office and met with chair and staff of justice portfolio
- presented to a class at Assiniboine Community College
- completed questionnaire and gave an interview for a student's masters thesis in Applied Criminology and Police Management
- presented to a Brandon University class studying *The Role of Police in Society*
- attended public consultation on Manitoba's new Police Act
- attended Manitoba Metis Federation's 41st Annual General Assembly Tradeshow in Brandon
- LERA commissioner elected President of Canadian Association for Civilian Oversight of Law Enforcement
- presented to Winnipeg Police Service recruit classes and newly promoted sergeants on *The Law Enforcement Review Act*
- enhanced participation in 2009 conference for the Canadian Association of Civilian Oversight of Law Enforcement (CACOLE) in Ottawa. Commissioner had the honour of introducing keynote speaker, the Honourable Roger Salhany, Commissioner of the Taman Commission of Inquiry
- attended meeting with other provincial civilian oversight agencies hosted by the Commission for Public Complaints Against the RCMP in Ottawa

- attended fifth annual lecture by Supreme Court Justice Marshall Rothstein at University of Winnipeg
- attended conference planning meeting for the Canadian Association of Civilian Oversight of Law Enforcement (CACOLE) in Ottawa
- met with the chief of the Winnipeg Police Service (WPS) and the inspector of the WPS Professional Standards Unit
- provincial court decisions related to LERA matters were distributed electronically to all police agencies

Acknowledgements

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

Case Summaries

Commissioner's Decision to Take No Further Action

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

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

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

Following are samples of cases in 2009 in which the commissioner decided no further action was required:

- A man went to a movie theatre and lost track of time. He had a court imposed curfew. While he was waiting at a bus stop the police arrested him for breaching his curfew. The man was informed of his rights and was charged. The man complained that the police treated him in a rough manner but he couldn't satisfactorily define the roughness. He later admitted that the officers did not threaten or physically abuse him. He said he was angry that he was arrested when he had been "clean" for a long time. The man said the curfew was "stupid".

The commissioner said that the complaint was filed for an improper purpose and was therefore vexatious.

* * * * *

- A man was home with his girlfriend and said he was drinking a non-alcoholic beverage. His neighbour came over and tried to sell him some pills. The man said the neighbour put some pills in his drink. The man decided to go for a walk and was "out of it". The next thing he remembered was the police throwing him out of a car and beating him up. The man was later told by his lawyer that he had gone to a convenience store where he destroyed goods by smashing them into the ground and knocking displays over. The police took the man to a police station. While driving to the police station the man became aggressive in the back seat and the police pulled over to put handcuffs on him. The man was uncooperative and some force was used to put on the handcuffs. The man had some injuries and said the officers used excessive force.

The commissioner said that there was insufficient evidence for a hearing and declined to take any further action on the file.

* * * * *

- A vehicle drove over the front lawn and sidewalk of a motel that was managed by a man and woman. It appeared to the couple that the driver of the vehicle was intoxicated so the woman called the police to report the incident. When the police arrived, they spoke to the woman and the conversation was

calm. The man then went out to speak with the officer and said he wanted the driver of the vehicle charged and taken to jail. The officer said the police would decide if charges should be laid. The man argued with the officer and both used profanity. The man said the officer was rude to him.

The commissioner said that there was insufficient evidence for a hearing and declined to take any further action on the file.

* * * * *

- Two young people were in a convenience store and saw some police officers driving by. They started running because one of the youth was out past his court imposed curfew and he was intoxicated. The police saw the pair running out of the store. The police knew the store had been robbed recently and, thinking the two may have robbed the store, the police chased them. While running, the youth threw down a bag of chips that his friend had stolen and given to him. The officers yelled at them to stop but they kept running. The youth slipped and fell and was stopped by an officer and the officer got on top of him and the youth said the officer started hitting him. The youth's friend was caught by another police officer. Both youths gave false names to the officers and were taken to the police car. One of the officers went into the convenience store to ask if a robbery had taken place and was told the youths had stolen some snack food. Both were taken to the police station and, after being checked over at a medical facility, were sent to a youth detention facility.

The commissioner said that there was insufficient evidence for a hearing and declined to take any further action on the file.

* * * * *

- A woman was run over by a car and the police were called. The woman later called the police station to ask if charges were going to be laid against the driver. The officer the woman spoke with said no charges were being laid and that the matter was being looked after by the Traffic Division. The woman said she was unhappy with this and expressed this to the officer. The officer asked her what she expected him to do and she replied that she expected him to do his job and asked him what he did all day. He replied that they drink coffee and eat donuts all day and hung up the phone. The woman felt that this was inappropriate conduct. The officer indicated that he meant this as a joke and felt that he was not going to get anywhere with further explanations and decided to end the call.

The commissioner said that there was insufficient evidence for a hearing and declined to take any further action on the file.

* * * * *

Case Summaries

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

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

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

Following are samples of these applications.

- Police were called to a home because of domestic violence that had first started at a local bar. The man and the woman were both intoxicated. There were children in the home and the officers had to physically remove them to see if they had any injuries. The officers had to use some force to remove the children from the woman, who was their mother. The woman said she was thrown to the ground by the officers and was taken from her home without being allowed to put on shoes or a jacket. Because of the woman's aggressive behaviour, the officers did not have an opportunity to let her put on shoes or a jacket. The woman was taken to the drunk tank and the man was taken to jail. The woman also said that the officers took her on a high speed ride outside of the perimeter. GPS records verified that the woman was driven directly to the drunk tank at a reasonable rate of speed.

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

DECISION: The woman did not show up for the review and the judge dismissed her application.

* * * * *

- A man was arrested at a grocery store for shoplifting. He was held by store security until police arrived. The man said he was held without incident by the store security guards. The security guards said the man tried to run. They used physical force to restrain him and one of the guards was injured. The man said that while he was in police custody he was stomped on or kicked and had some sort of burning liquid squirted onto his face. Any injuries that would have resulted from this were not mentioned to the medical personnel who treated the man shortly after his arrest.

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

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

* * * * *

- Two police officers went to an apartment building in response to complaints that one of the residents had left rude messages in front of his neighbours' apartment doors. During a discussion between the police and the man suspected of doing this, the man became agitated and argumentative and wasn't

making sense. The police discovered there was an outstanding warrant for the man's arrest for non-compliance of conditions on a Promise to Appear. The man was taken to the police station where he said he was thrown on the ground. The police officers said the man kicked a sergeant. The police went back to the man's apartment to get some medicine the man said he needed. The man said the officers had no authority to enter his apartment without a search warrant. The police said they were justified in entering the apartment to get the medicine, because it was in the best interest of the man.

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

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

* * * * *

- A concert promoter was walking up to a side door in a concert facility when he heard some knocking. He opened the door and a police officer was there with six other people. The man and the officer talked and then the officer entered the building with the six people. The promoter stopped them and asked to see their tickets. The officer just said they were with him and they all went ahead into the building. The man yelled at the officer to stop, but they all ignored him. The promoter yelled again and the officer turned and made an aggressive comment. After the concert, the promoter reported the incident to the police service. Some of the six people involved were later able to show a receipt for six tickets.

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

DECISION: Before the review date, the complainant withdrew his application for review. The court file was closed.

* * * * *

- A man and his wife were witnesses after a motor vehicle collision. The man said one of the drivers was impaired. The man and his wife stayed at the scene to help the other driver because the impaired driver was very angry. The couple stayed to provide information to the police when they arrived. When the police arrived and began investigating, the man said the officers treated them rudely. This included verbal threats, insults and obscene gestures. The police did not take a statement from the couple, even though they could provide details of the incident. The officers said that they did not take a statement because the man was obstructing their investigation by interrupting when the police were speaking with other witnesses.

The commissioner declined to take further action because there was insufficient evidence to justify a public hearing. The man asked to have a provincial judge review the commissioner's decision. After a review, the judge referred the matter back to LERA to have the man's wife interviewed because she was not interviewed as part of the original investigation. After this interview the commissioner again declined to take further action because there was still insufficient evidence to justify a public hearing. The man asked to have a provincial judge review the commissioner's second decision.

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

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Case Summaries

Informal Resolution of Complaints

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

Following are examples of complaints resolved informally in 2009

- A man had taken his friend to the hospital. The friend was in a lot of pain and was moaning loudly. A security guard came over and tried to pick up the friend who was lying on the floor. The man said he asked the security guard not to touch his friend and the security guard assaulted him. The man filed a complaint with the police. When he didn't hear anything further, he said he was not being treated properly by the police. In protest, the man placed some signs in the window of his home. The police went to the home in response to complaints about the signs. The police knocked and when the man did not answer, the police used something other than their hands to bang on the door, causing damage to the door.

The complaint was resolved informally with the man being reimbursed for damage caused to his door.

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- The police responded to a domestic violence incident that involved a firearm. The police had received a tip that the man involved in the dispute, who allegedly had a firearm, was headed to a relative's home. The police went to the relative's home. They found the door unlocked and went inside. The police called out the name of the man who lived at the house and he came to see what was happening. He found eight officers in his home. The man's wife and three children were in the house at the time. Wanting to get the police out of his house as soon as possible he allowed them to search his house for his cousin who he told the police wasn't there. After a search of the house, the police left.

A while later, as the man's spouse, their son, the spouse's friend and her son were leaving the house to go to the store, the police, who had been surrounding the house, came up to them in their yard and pointed guns at them and told them to stand by a fence. The police searched the two mothers and sons. The man was yelling from his window to leave them alone and not to point guns at the children. The police said they were responding to another call they received that the man with the firearm was at their home. The police then left the premises.

The second part of the complaint was resolved informally with a meeting between the man, his family and the officers involved. The first part of the complaint was scheduled to be heard separately, but one of the officers was called away at the last minute and the complainant did not want to proceed without that officer. A further date was scheduled but the complainant did not respond and the informal resolution was cancelled. The file was closed with one part of the complaint being resolved informally and the other part being abandoned.

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Case Summaries

Public Hearings Before a Provincial Judge

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

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

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

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

Following are the results of public hearings on the merits of complaints heard in 2009

- A young man was a passenger in a vehicle that was pulled over by the police. The man said he was injured when he was pulled out of the vehicle, thrown to the ground and arrested by the police. He said the cell phone in his pocket was damaged during the arrest.

Officer Misconduct: one police officer

Allegations: Abuse of authority by using oppressive or abusive conduct or language, using unnecessary violence or excessive force, and by damaging property or failing to report the damage.

Disposition: The complainant did not respond to letters from the court to set a hearing date. The judge dismissed the complaint.

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- The police went to a house party in response to complaints of loud noise and drunkenness. The man who was hosting the party was arrested and received some minor injuries during the arrest. The man was put in a police van and when he would not obey the verbal requests given by the police officer, the man was tasered. The police officer who used the taser also grabbed a cell phone away from the man and the cell phone was damaged.

Officer Misconduct: one police officer

Allegations: Abuse of authority by using unnecessary violence or excessive force, and by damaging property or failing to report the damage.

Disposition: Before a hearing date was set, the complainant contacted the provincial court to say he no longer wanted to proceed and the file was closed by the judge.

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- A man was intoxicated and passed out on the sofa at a friend's home. The police were called and arrested the man for an assault that had taken place earlier. The man was unco-operative and the police used force to make the arrest. The man said the officers beat him up, kicked him in the face and slammed the car door on his head. The man had injuries and his glasses were broken. The man also said the officers made racial remarks about him and his aunt.

Officer Misconduct: two police officers

Allegations: Abuse of authority by using excessive and unnecessary force, by using oppressive or abusive conduct or language, by using differential treatment without reasonable cause, and by damaging property or failing to report the damage.

Disposition: Complainant did not go to the hearing and the judge dismissed the complaint.

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- A man was sleeping at his home when officers came in, woke him up and told him he was under arrest. The man said the officers would not tell him why he was being arrested. He asked to go to the bathroom before they handcuffed him and the officers said he could go at the police station. The man was only wearing underwear, but the officers would not give him any privacy so he agreed to wait until he got to the police station. After the man was placed in a police car, the officers went back into the house to question the man's wife and child. The police found property that they believed was important to their investigation and took it to the station with the man.

The man again asked to go to the bathroom. He was denied. Having no other choice, the man urinated on the floor of the holding cell. An officer came in, went and got a mop and bucket and told the man to clean it up. The man refused. The officer approached the man and a scuffle took place. The officer ended up on the floor in the puddle of urine. The man said he was injured during the scuffle. Another officer helped put the man back in handcuffs.

Officer Misconduct: two police officers

Allegations: Abuse of authority by conducting an unreasonable search and seizure, by failing to inform the complainant of his rights, by using unnecessary violence or excessive force and by using oppressive or abusive conduct or language.

Disposition: Complainant did not go to the hearing and the judge dismissed the complaint.

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- A man had two female guests in his apartment, drinking alcohol. The man and one of the women began arguing and she slashed him with a knife. When he threatened to call the police, she unplugged the telephones, put them in her bag and left the apartment. After a few minutes, the man and the other woman went to look for her. When they found her, the man tried to get his phones out of the woman's bag. She punched him and he punched her back. The other woman then jumped on the man and he punched her as well. Police officers who were on another call in the area saw the argument and one of the officers ran over, yelling at them to stop. When the man did not stop, the officer tackled him and put him in handcuffs.

Officer Misconduct: two police officers

Allegations: Abuse of authority by using unnecessary violence or excessive force, and by using oppressive or abusive conduct or language.

Disposition: The judge found that there was not clear and convincing evidence to show that the officers committed any disciplinary defaults and dismissed the matter.

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- Two youths were in a stolen vehicle and were being chased by police. The two were trying to avoid a spike belt laid out by police. They swerved and jumped a curb, then swerved again and crashed into a pole. They then tried to run from the stolen vehicle, but other police cars arrived at the scene and one youth ran into a police car causing injuries. The youth said the officers hit him with the car intentionally.

Officer Misconduct: four police officers

Allegations: Abuse of authority by unnecessary violence or excessive force, and by using oppressive or abusive conduct or language.

Disposition: Complainant did not go to the hearing and the judge dismissed the complaint.

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Contributing Causes

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

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

An incident that resulted in recommended changes:

A youth was running down a back lane on his way to school and was stopped by undercover officers in an unmarked car. The officers asked what his address was and the youth refused to tell them. The officers asked him to take his hands out of his pockets and had him empty his pockets. One of the officers got out of the car and threw the youth on the hood of the police car while the other officer put handcuffs on him. The officers said there had been break-ins in the area and they were spot checking people. The youth was belligerent and spat in the direction of the car. The officers held the youth until they could verify his identify. When he finally gave them his name and address, the officers found the youth had no outstanding charges. He said the officers did not read him his rights and that detaining him was unlawful.

The commissioner said the youth should have been informed of his right to counsel when he was being held. The commissioner wrote to the chief of the police agency to remind him about the Supreme Court of Canada’s recent clarification: when a detention occurs, a police officer has the duty to inform a person of the reason for the detention and the right to legal counsel.

The police agency wrote back to the commissioner and said that the information had been forwarded to the training unit to ensure that new recruits and current members are aware of their responsibilities in this type of circumstance.

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Statistical Analysis

- LERA's jurisdiction extends to 12 police services with 1,476 police officers. Total population served is 727,096.
- Winnipeg Police Service accounts for 92 per cent of complaints made to LERA. Brandon Police Service accounts for 3.5 per cent and other forces account for the remainder.
- There were 297 files opened in 2009, an increase of 45 complaints compared to 2008. The 5-year average is 320.
- The 169 formal complaints filed is up from 155 formal complaints in 2008. This figure remains higher than the number of files for which formal complaints were never received or files that were closed after preliminary investigation (128 complaints).
- In 2008, there were 367 total investigations. In 2009, there were 321 investigations, down 46. There was a decrease in the number of investigations completed in 2009. The number was down 25 to 189 files in 2009.
- There has been a drop in the number of allegations of disciplinary defaults in four of the main categories: abuse of authority, using oppressive or abusive conduct or language, using unnecessary or excessive force, and being discourteous or uncivil.
- There were no complaints alleging the misuse of pepper spray in 2009. However, there were four complaints of misuse of the taser.
- There were 14 incidents alleging misuse of handcuffs in 2009, 3 less than in 2008.
- Incidents alleging injuries from the use of force dropped to 71 and were made in 42 per cent of complaints investigated.
- There were 2 informal resolutions of complaints in 2009 down from 4 in 2008. 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 dropped from 2008. LERA investigators contact complainants after the investigation is completed but before a final letter is written. In many cases, when complainants see the results of the investigation, they drop the complaint. In other cases, when a LERA investigator is unable to locate the complainant, a letter is sent to the complainant's last known address asking the complainant to contact the investigator. If contact is not made within 30 days, the complaint is considered abandoned and a registered letter is sent to that effect. (See Table 9)
- Complainants' requests for judges to review the commissioner's decision remained the same at 21 in 2009. The 5-year average is 15. (See Table 11)
- LERA does not do criminal investigations. When a case shows evidence that a criminal offence may have been committed, the commissioner or provincial judge must report it to the attorney general and a criminal investigation is done. There were more criminal investigations requested by complainants in 2009 than in 2008.

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 2009, 14 criminal

complaints were made after a LERA complaint was also filed, up 5 from 2008. (See Tables 12 and 13)

- During a criminal investigation against an officer or a complainant, the LERA investigation is put on hold. These 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 has been a major concern for many years. With the government making an investment in human resources in recent years, positive results are evident with a **decrease** from 13 months in 2008 to 9 months in 2009. This trend is expected to continue. (See Tables 15 and 16)

- The average age of a complainant is 32. The oldest complainant was 72 and the youngest was 12. (See Table 18)

2009 Statistical Report – Data Tables

Table 1: Complaints – Listed by Police Service	Police Officers **	Population ***	2009 (n=169)	2008 (n=155)	2007 (n=188)	2006 (n=244)	2005 (n=251)
Altona	7	3,709	0	0	0	0	0
Brandon	80	41,511	6 (3.5%)	9 (6%)	13 (7%)	23 (9%)	19 (7.2%)
Dakota Ojibway (DOPS)	29	11,183	6 (3.5%)	4 (2.6%)	3 (1.6%)	4 (1.6%)	5 (2.0%)
Morden	13	6,571	1 (.6%)	0	2 (1%)	0	0
Rivers	3	1,193	0	0	0	1 (0.4%)	1 (0.4%)
Ste. Anne	5	1,534	0	2 (1.3%)	2 (1%)	0	0
Winkler	16	9,106	1 (.6%)	1 (.6%)	3 (1.6%)	0	0
Winnipeg	1318	633,451	155 (92%)	138 (89%)	161 (86%)	207 (85%)	223 (89%)
RM of Cornwallis*	1	4,058	0	1 (.6%)	0	0	0
RM of Springfield*	2	12,990	0	0	0	0	0
RM of Victoria Beach*	1	388	0	0	1 (.5%)	1 (0.4%)	0
RM of Whitehead*	1	1,402	0	0	1 (.5%)	0	0
Other	0	0	0	0	0	1 (0.4%)	1 (0.4%)
Total	1476	727,096	100%	100%	100%	100%	100%

* Supplementary police service – RCMP have primary responsibility

** Source: Director, Aboriginal and Community Law Enforcement, Manitoba Justice

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

Table 2: Public Complaints	2009	2008	2007	2006	2005
Files opened	297	252	308	367	375
Resolved at intake	128	97	120	123	124
Formal complaint received	169	155	188	244	251

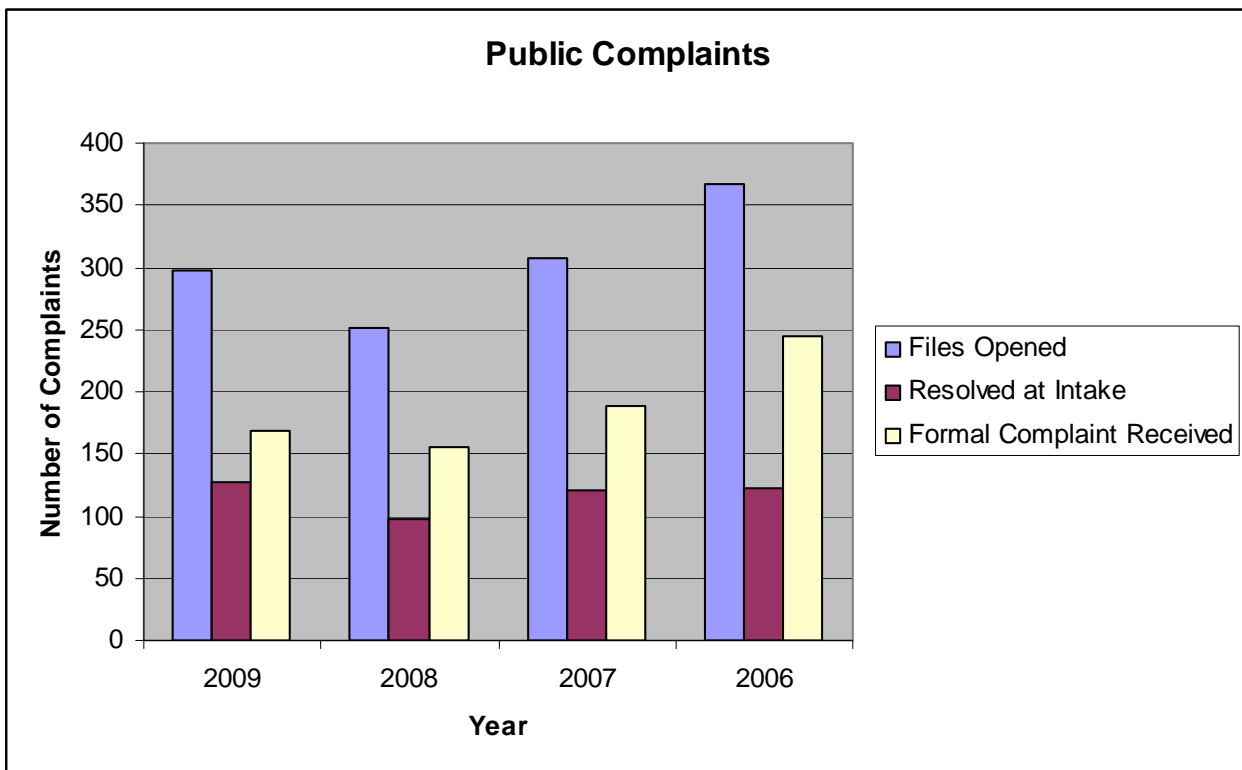


Table 3: Investigations Conducted	2009	2008	2007	2006	2005
Total investigations	321	367	422	560	532
Investigations completed - files closed	189	214	208	324	217
Ongoing investigations carried over as of December 31, 2009	132	153	214	236	315

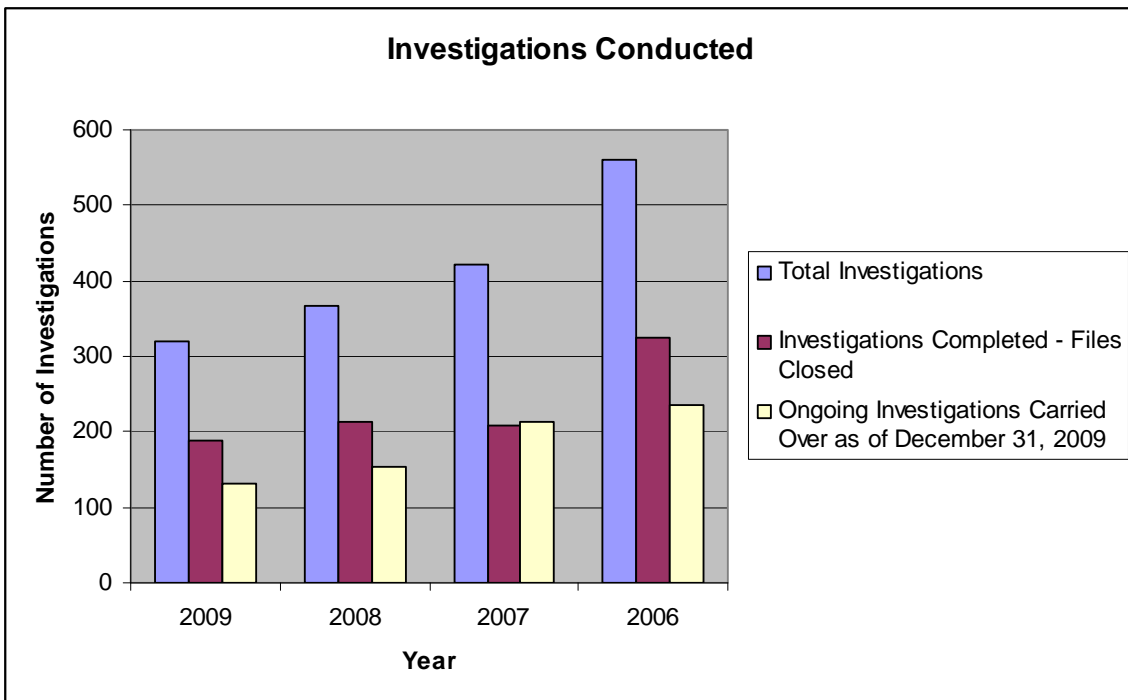


Table 4: Complainants' Allegations: Discipline Code Section 29 <i>The Law Enforcement Review Act</i>	2009	2008	2007	2006	2005
Abuse of authority Subsection 29(a)	40	49	67	112	109
Arrest without reasonable or probable grounds Subsection 29(a)(i)	20	17	25	64	16
Using unnecessary or excessive force Subsection 29(a)(ii)	83	88	106	157	130
Using oppressive or abusive conduct or language Subsection 29(a)(iii)	66	79	88	123	145
Being discourteous or uncivil Subsection 29 (a)(iv)	34	35	56	86	79
Seeking improper personal advantage Subsection 29(a)(v)	0	0	0	1	0
Serving civil documents without proper authorization Subsection 29(a)(vi)	0	0	2	1	1
Differential treatment without cause Subsection 29(a)(vii) <i>The Human Rights Code</i> Subsection 9(2)	11	14	14	32	23
Making false statement(s) Subsection 29(b)	1	2	5	15	11
Improperly disclosing information Subsection 29(c)	9	6	4	2	4
Failing to exercise care or restraint in use of firearm Subsection 29(d)	1	3	0	3	5
Damaging property or failing to report damage Subsection 29(e)	6	9	7	4	7
Failing to provide assistance to person(s) in danger Subsection 29(f)	3	2	2	13	8
Violating person's privacy (under <i>The Privacy Act</i>) Subsection 29(g)	0	0	1	2	1
Contravening <i>The Law Enforcement Review Act</i> Subsection 29(h)	0	0	1	1	0
Assisting any person committing a disciplinary default Subsection 29(i)	0	1	3	0	0

Table 5: Incidents Alleging Misuse of Pepper Spray			
2009 (n=0)	2008 (n=1)	2007 (n=1)	2006 (n=4)
0 of 169 complaints investigated	1% of 155 complaints investigated Brandon PS - 1	1% of 188 complaints investigated Dakota Ojibway PS = 1	2% of 244 complaints investigated Winnipeg PS = 3

Table 6: Incidents Alleging Misuse of Handcuffs			
2009 (n=14)	2008 (n=17)	2007 (n=26)	2006 (n=25)
8% of 169 complaints investigated Winnipeg PS = 10 Brandon PS = 1 Dakota Ojibway PS = 3	11% of 155 complaints investigated Winnipeg PS = 17	14% of 188 complaints investigated Winnipeg PS = 26	10% of 244 complaints investigated Winnipeg PS = 23 East St. Paul PD = 1 Dakota Ojibway PS = 1

Table 7: Incidents Alleging Misuse of Taser			
2009 (n=4)	2008 (n=8)	2007 (n=11)	2006 (n=1)
2% of 169 complaints investigated Winnipeg PS = 4	5% of 155 complaints investigated Winnipeg PS = 6 Dakota Ojibway PS = 1 Brandon PS = 1	6% of 188 complaints investigated Winnipeg PS = 9 Winkler PS = 1 Victoria Beach PS = 1	.4% of 244 complaints investigated Brandon PS = 1

Table 8: Incidents Alleging Injuries from Use of Force			
2009 (n=71)	2008 (n=79)	2007 (n=93)	2006 (n=120)
42% of 169 complaints investigated Winnipeg PS = 66 Brandon PS = 1 Dakota Ojibway PS = 4	51% of 155 complaints investigated Winnipeg PS = 76 Brandon PS = 2 Dakota Ojibway PS = 1	49% of 188 complaints investigated Winnipeg PS = 86 Dakota Ojibway PS = 3 Brandon PS = 1 Winkler PS = 1 Victoria Beach PS = 1 Ste. Anne PD = 1	49% of 244 complaints investigated Winnipeg PS = 114 Brandon PS = 2 Dakota Ojibway PS = 2 East St. Paul PD = 2

Table 9: Disposition of Complaints	2009 (n=189)	2008 (n=216)	2007 (n=208)	2006 (n=324)	2005 (n=217)
Dismissed by commissioner as outside scope of act	12 (6%)	6 (3%)	12 (6%)	41 (13%)	40 (18%)
Dismissed by commissioner as frivolous or vexatious	4 (2%)	5 (2%)	2 (1%)	6 (2%)	2 (1%)
Dismissed by commissioner as not supported by sufficient evidence to justify a hearing	81 (43%)	92 (43%)	90 (43%)	92 (28%)	53 (24%)
Abandoned or withdrawn by complainant	83 (44%)	104 (49%)	91 (44%)	163 (50%)	103 (47%)
Resolved informally	2 (1%)	4 (1%)	8 (4%)	5 (2%)	4 (2%)
Public hearing before a provincial court judge	6 (3%)	5 (2%)	6 (3%)	16 (5%)	15 (7%)
Admission of guilt by respondent officer	0	0	0	1 (0.3%)	0
Disposed via criminal procedure	1 (.5%)	0	0	N/A	N/A

Table 10: Legal Involvement of Complainants	2009 (n=169)	2008 (n=155)	2007 (n=188)	2006 (n=244)	2005 (n=251)
No charges	58 (34%)	53 (34%)	76 (40%)	101 (41%)	112 (45%)
Traffic offences	19 (11%)	12 (8%)	13 (7%)	28 (11%)	11 (4%)
Property offences	6 (4%)	10 (6%)	12 (6%)	17 (7%)	25 (10%)
Intoxicated persons detention	12 (7%)	9 (6%)	11 (6%)	8 (3%)	13 (5%)
Cause disturbance	1 (.6%)	1 (0.6%)	3 (2%)	3 (1%)	1 (0.4%)
Assault police officer/resist arrest	25 (15%)	23 (15%)	25 (13%)	30 (12%)	31 (12%)
Impaired driving	1 (.6%)	3 (2%)	4 (2%)	3 (1%)	1 (0.4%)
Offences against another person	10 (6%)	23 (15%)	17 (9%)	27 (11%)	24 (10%)
Domestic disputes	4 (2%)	1 (0.6%)	2 (1%)	1 (0.4%)	3 (1%)
Drugs	27 (16%)	5 (3%)	N/A	N/A	N/A
The Mental Health Act	3 (2%)	N/A	N/A	N/A	N/A
Other	3 (2%)	15 (10%)	25 (13%)	26 (11%)	30 (12%)

Table 11: Provincial Judges' Review of Commissioner's Decision to Take No Further Action	2009	2008	2007	2006	2005
	21	21	16	5	11

Table 12: Referrals by Commissioner of Complaint for Criminal Investigation	2009	2008	2007	2006	2005
	1	0	0	1	0

Table 13: Complainants Have Also Lodged a Criminal Complaint with Police	2009	2008	2007	2006	2005
	14	9	20	21	27

Table 14: Time Span of Ongoing Investigations Carried Over as of December 31, 2009

YEAR	1-3 Months	4-7 Months	8-12 Months	13-18 Months	19-23 Months	24+ Months	Total
2006	0	0	0	0	0	19	19
2007	0	0	0	0	0	9	9
2008	0	0	0	11	5	0	17
2009	38	34	16	0	0	0	88
Total	38	34	16	11	5	28	132

Table 15: Files Concluded in 2009 by Year of Origin

Year	Number of Files	Average Time to Close Investigation
2004	1	45 months
2005	8	25 months
2006	8	28 months
2007	24	13 months
2008	67	9 months
2009	81	4 months
Total	189	9 months

Table 16: Length of Time to Complete Investigations	2009 (n=189)	2008 (n=214)	2007 (n=208)	2006 (n=324)	2005 (n=217)
1-3 Months	49	43	54	74	42
4-7 Months	65	67	49	42	42
8-12 Months	36	39	51	75	46
13-18 Months	23	15	22	57	34
19-23 Months	5	11	10	23	22
24+ Months	11	39	22	53	31
Average	9 months	13 months	11 Months	13 Months	12 Months

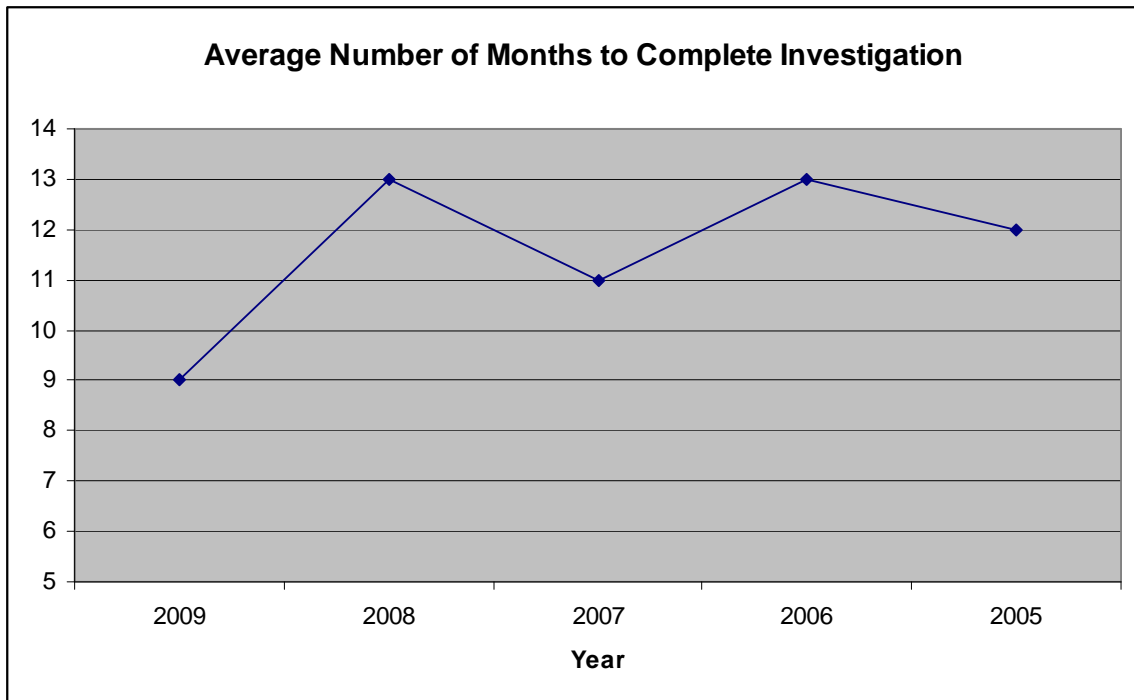


Table 17: Location of Incident	2009 (n=169)	2008 (n=155)	2007 (n=188)	2006 (n=244)	2005 (n=251)
Street	51	45	57	108	68
Private residence	49	56	54	61	97
Public building/place	28	13	23	15	25
Police station	30	28	41	37	46
Other	11	13	13	23	15

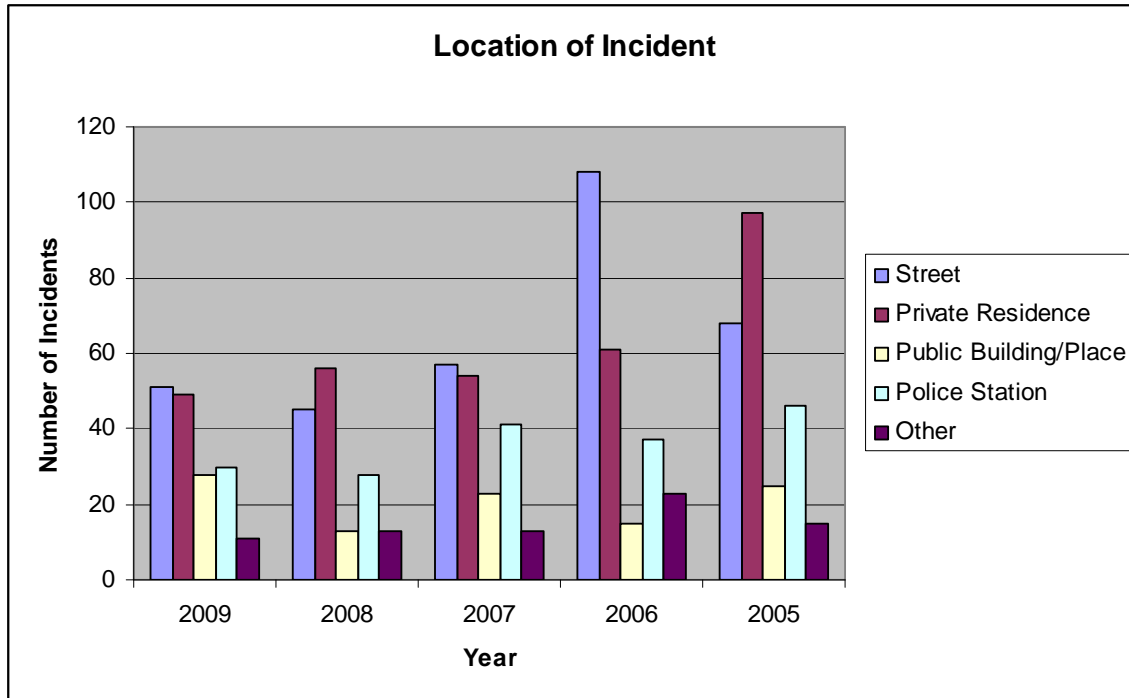


Table 18: Complainant Demographics	2009 (n=169)	2008 (n=155)	2007 (n=188)	2006 (n=244)	2005 (n=251)
Gender					
Male	122 (72%)	111 (72%)	140 (74%)	164 (67%)	171 (68%)
Female	47 (28%)	44 (28%)	48 (26%)	80 (33%)	80 (32%)
Age					
Over 50	13 (8%)	21 (14%)	35 (19%)	25 (10%)	30 (12%)
40 - 49	29 (17%)	26 (17%)	32 (17%)	40 16%	48 (19%)
30 - 39	39 (23%)	38 (25%)	36 (19%)	40 (16%)	48 (19%)
18 – 29	58 (34%)	47 (30%)	34 (18%)	73 (30%)	56 (22%)
Under 18	21 (12%)	16 (10%)	22 (12%)	32 (13%)	39 (16%)
Birth date unknown	9 (5%)	7 (4%)	29 (15%)	34 (14%)	30 (12%)
Average Age	32	N/A	N/A	N/A	N/A
Oldest Complainant	72	N/A	N/A	N/A	N/A
Youngest Complainant	12	N/A	N/A	N/A	N/A