

MANITOBA WILL BE MAKING CHANGES TO *THE PROVINCIAL POLICE ACT* IN 2009.
THE PROVINCE INVITES MANITOBANS TO PROVIDE THEIR COMMENTS TO HELP
SHAPE THE NEW LAW. CONSULTATION PAPERS HAVE BEEN PREPARED TO HELP
OBTAIN THE VIEWS OF MANITOBANS ON THE MAJOR ELEMENTS OF THE NEW ACT.

Background: Manitoba's Law Enforcement Review Agency (LERA)

Introduction

The Law Enforcement Review Agency (LERA) is an independent, non-police agency, established under *The Law Enforcement Review Act* in 1985. It investigates public complaints about non-criminal police conduct. This backgrounder provides an overview of what LERA does, how it works and how it deals with cases that are not within its mandate, such as criminal investigations, police service investigations or police policies.

How does LERA work?

LERA deals only with on-duty complaints about municipal or local police arising from the performance of police duties. LERA cannot investigate complaints about Royal Canadian Mounted Police (RCMP) officers because the RCMP is a federal agency.

It does not investigate criminal matters. Criminal matters must be referred to the provincial Crown attorney's office for investigation by the police.

LERA's staff consists of a commissioner, four investigators, a registrar and a clerk. The commissioner is required to submit an annual report on the performance of his or her duties and functions to Manitoba Justice's minister and to each municipality that has a police service.

To whom does the act apply?

The act applies to the police officers employed by Manitoba's 12 municipal or local police services, including police chiefs. It does not apply to members of the RCMP or military police.

It also applies to the conduct of police officers from other provinces or territories who have been appointed as police officers in Manitoba for specific investigations.

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 for specific investigations.

What does LERA investigate?

LERA investigates allegations from the public that municipal or local police officers have abused their authority by:

- 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
- showing 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

What if a complaint involves criminal conduct?

LERA cannot conduct criminal investigations.

Cases involving criminal misconduct must be investigated by police. When a complaint to the commissioner or a provincial judge shows evidence that a police officer may have committed a criminal offence, the commissioner or provincial judge must refer the complaint to the provincial Crown attorney's office for investigation by the police.

In such cases, LERA investigators also let complainants know that they can make a criminal complaint to the police force involved.

While a criminal investigation is being done, the LERA investigation has to be put on hold. Criminal investigations and court proceedings may take many months or even years to complete. This delay is beyond LERA's control and affects the length of time LERA needs to complete its investigations.

In 2007, 20 criminal complaints were made at the same time a LERA complaint was filed.

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. If you file 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. The date, time, location and other details of the incident are important and must be included. 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 any complaints they receive to LERA.

Are there time limits?

The act requires a written complaint to be made to LERA 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.

How are complaints screened?

After LERA finishes an investigation, the commissioner will screen the complaint to decide if any further action should be taken. The act requires the commissioner to do this.

The commissioner will take no further action if:

- 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 at no cost to the complainant.

Does a complainant need a lawyer?

Complainants do not have to have a lawyer when dealing with LERA.

Complainants and the police are both allowed to have legal representation involved during the process if they choose, but they have to arrange for those services themselves.

If complainants apply for legal aid and do not qualify, in some exceptional circumstances they can ask the Manitoba Justice minister to appoint a lawyer to represent them at a hearing. Counsel may be appointed by the minister only where applicants 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 are complaints resolved?

The act provides several ways to resolve complaints when the commissioner decides that there is sufficient evidence to justify referring the complaint to a provincial judge for a public hearing.

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 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 a 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 respondent officers under the 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

Recent statistics related to LERA

According to LERA's 2007/2008 annual report:

- Winnipeg Police Service is the largest organization LERA deals with and 86 per cent of complaints made to LERA are about their officers.
- Brandon Police Service accounts for seven per cent and other forces account for the remainder.
- There were 308 files opened in 2007, a decrease of 59 complaints compared to 2006; the five year average is 368 complaints over the course of a year.
- The 188 formal complaints filed in 2007 was the lowest number of complaints recorded in the past five years.
- In 2006, there were 560 total investigations. In 2007, there were 422 investigations, a decrease of 138.
- There was a corresponding decrease in the number of investigations completed in 2007, down 116 to 208 files.
- There was one complaint alleging the misuse of pepper spray in 2007. There were 11 complaints of misuse of the Taser. There were 26 incidents alleging misuse of handcuffs in 2007, one more than in 2006.
- Incidents alleging injuries from the use of force decreased to 93 and were made in 49 per cent of complaints investigated.

For more information

More information about LERA is available on its website at www.gov.mb.ca/justice/lera/index.html