

**IN THE MATTER OF**  
**ONTARIO REGULATION 123/98**  
**MADE UNDER THE POLICE SERVICES ACT, R.S.O. 1990, C.P.15**  
**AND AMENDMENTS THERETO;**  
**AND IN THE MATTER OF**  
**DETECTIVE CONSTABLE JOHN READ,**  
**DETECTIVE CONSTABLE JASON RYBAK**  
**AND THE**  
**THUNDER BAY POLICE SERVICE**

**APPEARANCES**

Mr. Robert C. Edwards	-	for the Thunder Bay Police Service
Mr. Danny Gunn	-	for Constable Jason Rybak
Mr. George Joseph	-	for Sergeant John Read
Ms. Asha James	-	for Mr. Andrew Cotter (complainant)

**BEFORE:**

Superintendent (retired) Robert J. Fitches

**Reasons released electronically:** October 27, 2015

**REASONS FOR DECISION and DISPOSITION**

## **Background**

Shortly prior to convening the hearing into these allegations of misconduct, it became apparent that the parties had reached an agreement as to the facts as well as the disposition. Consequently, the hearing was convened, the facts were read into the record and Sergeant Read entered a plea of 'guilty' to Neglect of Duty. Upon a finding of guilty against Detective Constable Read, the allegations of misconduct against Constable Rybak were withdrawn at the request of the prosecutor and with the concurrence of all counsel.

## **The Allegations**

It is alleged that Sergeant Read neglected his duty on or about October 26<sup>th</sup>, 2011.

While in the company of Detective Constable Jason Rybak, Sergeant Read was investigating a harassment complaint lodged by Mr. Dubuc against Mr. and Mrs. Andrew Cotter. Mr. Dubuc provided two will-says and video surveillance and suggested to the officers that there had been harassment extending over a ten-year period. It was evident from reviewing the police files that these matters had indeed dated back to approximately 2003. The file revealed that a Crown opinion had been obtained in 2008, at which time it was felt that there were not sufficient grounds to lay a charge.

During this most recent investigation, Sergeant Read had been advised to obtain an opinion from the Crown's Office. Sergeant Read failed to do so and pursued a prosecution of criminal harassment against Mr. Andrew and Mrs. Grace Cotter.

On Thursday October 27<sup>th</sup>, 2011, Sergeant Read and Constable Rybak arrested Grace Cotter for Criminal Harassment. Shortly thereafter, she was released. Mr. Andrew Cotter subsequently attended at the Thunder Bay Police Service Headquarters to be arrested and was, a short time later, released.

Mr. and Mrs. Cotter's side of the story was never obtained during the investigation. An opinion from the Crown's office had not been obtain prior to the laying of charges in these matters. The Crown subsequently withdrew the charges against Mr. and Mrs. Cotter.

The Cotters had been subjected to an arrest and court appearances which were upsetting to them. Mr. Cotter filed a public complaint which ultimately led to our having convened this hearing.

It was submitted that the constellation of facts relating to the investigation and the laying of charges against Mr. and Mrs. Cotter showed negligence on Sergeant Read's part in performing his duties.

## Finding

Given the facts as entered into the record, when combined with Sergeant Read's guilty plea, I find him *Guilty* of Neglect of Duty.

## Disposition Phase

### Submissions – by Mr. Edwards

It was jointly submitted that a disposition eight (8) hours' time was an appropriate penalty in these matters.

It was Mr. Edwards' position that when applying the normal considerations relative to disposition, the disposition agreed to by all parties was well within the range of what would be viewed as appropriate, given all of the circumstances.

Sergeant Read has been a police officer for over 23 years and this is his first brush with the disciplinary system. He has entered a guilty plea to these allegations which must act to mitigate penalty. The public complainant has agreed to this disposition and he is represented by capable and experienced counsel. Mr. Cotter has made it clear that neither he nor Mrs. Cotter wish to jeopardize Sergeant Read's career. The joint submission on disposition also includes a requirement for training relating to investigations and the articulation of grounds for arrest.

Sergeant Read, to his credit, has written and signed a letter of apology to the complainants, acknowledging the misconduct for which he has pled guilty.

### Submissions – by Ms. James

Ms. James submitted that the complainant is satisfied with the disposition being put forth, which includes a forfeiture of 8 hours' time and a requirement for training. The apology has also entered into Mr. Cotter's decision to agree with the disposition.

### Submissions – by Mr. Joseph

Sergeant Read is 48 years old and has been policing for 23 years; the last six as a Sergeant. In 2013, he was selected by the R.C.M.P. to do police mentoring in Afghanistan, which he did from January to December of that year.

Upon returning from the Middle East, Sergeant Read was unable to return to active duty because he was, and continues to suffer with cancer. He is still battling the disease and his program of treatment is allowing him to continue to work in a certain capacity.

Sergeant Read has accepted responsibility for his actions and looks forward to increasing his skills with future training. He regrets the ordeal that the Cotters had to endure and has so stated in his letter of apology. He accepts the agreed to penalty of 8 hours' time and appropriate training.

### **Discussion**

I am satisfied that Sergeant Read has comported himself admirably in response to the complaint lodged by Mr. and Mrs. Cotter. He has demonstrated that he fully accepts responsibility for his actions, recognizes the embarrassment and discomfort his failure to fully investigate have caused and clearly recognizes the seriousness of the offence.

His record of service is blemish-free, in that he has never had any involvement with the disciplinary system until now. He has 23 years of service and has obviously been held in high esteem by his colleagues and peers, as demonstrated by his having been identified to assist the Afghani police in the formation of a capable and credible policing entity in that country.

He has suffered through cancer for some time now. Notwithstanding his very serious illness, he sits before this tribunal and apparently performs some appropriate duties even though he could refrain from doing either, with very little trouble. He is not using his illness as justification for not accepting responsibility for his actions and moving forward with his life and his career.

One of the more notable aspects of this case from my point of view is Sergeant Read's decision to write a letter of apology to Mr. and Mrs. Cotter. As I attempted to observe in the hearing room, this is one aspect of police misconduct that is, in my view, lacking. Sergeant Read's maturity in helping to resolve the issues between the police service and the Cotters is commendable. I cannot refrain from observing that I found that the Cotters showed great civility, compassion and fairness in their decision to adopt the manner in which these issues have been disposed of.

I am quite satisfied, given all of the facts of this situation, including the usual considerations relative to disposition, that the disposition being jointly proposed is adequate and accurately reflects the nuances of the fact situation before me. I heartily endorse the forfeiture of 8 hours' time and the provision of training relative to investigations and articulating grounds for arrest, as identified by Sergeant Read's commanding officer.

## Disposition

The penalty assessed is a forfeiture of 8 hours' time.

Additionally, Sergeant Read will undergo training in investigations and articulating grounds for arrest, as identified by his commanding officer.



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Robert J. Fitches  
Superintendent (ret'd.)  
Hearing Officer

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October 19<sup>th</sup>, 2015