



The Supreme Court of Canada rules that relevant police misconduct has to be disclosed in a criminal case even if it was removed from an officer's disciplinary file.

Every person charged with a criminal offence in Canada has a constitutional right to a fair trial and to know the case against them. This guarantee is given practical effect through disclosure. Disclosure is the information the Crown must share with an accused person before trial. Police must help with this obligation by giving the Crown the materials from their investigation. This includes information about police misconduct that could affect an officer's credibility or reliability.

In 2015, a finding of misconduct was made against a police detective of the Edmonton Police Service. Sometime before January 2022, that finding was removed from the detective's record of discipline because of Alberta's *Police Service Regulation*. According to the *Regulation*, certain police misconduct records are removed from an officer's disciplinary record and destroyed after a period of time if there are no further discipline entries. The *Regulation* also says those records cannot be used or referred to in future proceedings about the officer.

In May 2022, John McKee was charged with several drug, weapons and possession-related offences. The charges came from a police investigation in which the detective was the lead investigator. As part of Mr. McKee's prosecution, the police gave the Crown a disclosure package. For the detective, the police said there was no misconduct information to disclose.

Mr. McKee's lawyer later learned of the existence of a disciplinary record concerning the detective and requested its disclosure. The police refused to disclose the record.

Mr. McKee went to the Court of King's Bench of Alberta where he made an application for disclosure. The judge agreed. He found that Alberta's *Police Service Regulation* did not control whether misconduct information is relevant and should be disclosed in criminal proceedings. In certain circumstances, parties can appeal directly to the Supreme Court of Canada without first going to a court of appeal. The police in this case appealed directly to the Supreme Court of Canada.

The Supreme Court dismissed the appeal.

The Crown, not the police, decides what relevant police misconduct information must be disclosed to an accused.

Writing for a unanimous Court, Justice Martin explained that disclosure in criminal cases is based on relevance. Police must give the Crown relevant information, including information about police misconduct. The Crown is then responsible for deciding what must be disclosed.

Justice Martin said that removing a misconduct finding from an officer's disciplinary file does not erase the finding for criminal law purposes. The record may still matter if it could affect the case against the accused. For example, it may be relevant to the officer's credibility, reliability, or conduct during the investigation.

In this case, the Crown reviewed the detective's misconduct record and decided it had a realistic impact on the detective's credibility. Because the detective played more than a minor role in the investigation, the record had to be disclosed.

Breakdown of the decision: *Unanimous*: Justice [Martin](#) dismissed the appeal (Chief Justice [Wagner](#) and Justices [Karakatsanis](#), [Côté](#), [Rowe](#), [Kasirer](#) and [Jamal](#) agreed)

More information: [Decision](#) | [Case information](#)

Lower court rulings: [Application](#) (Court of King's Bench of Alberta)

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