



Case in Brief: ***R. v. Hussein***

Judgment of January 23, 2026 | On appeal from the Court of Appeal for Ontario
Neutral citation: 2026 SCC 2

The Supreme Court of Canada clarifies how an accused's prior convictions may be used to challenge their credibility at trial.

This case was about whether a trial judge made an error in dismissing an accused's application to exclude parts of his criminal record from evidence at a jury trial. This is called a *Corbett* application after a Supreme Court of Canada case of the same name, [*R. v. Corbett*, \[1988\] 1 S.C.R. 670](#). It determines what the jury is allowed to know about the accused's past when deciding the case.

Under section 12 of the *Canada Evidence Act*, the Crown may question an accused about prior convictions for the purpose of assessing credibility. However, trial judges retain a discretion to exclude such evidence when its prejudicial effect outweighs its probative value. Prejudicial effect refers to the risk that the evidence will unfairly influence the jury, rather than help it decide the case based on the facts. Probative value refers to how helpful the evidence is in deciding a specific issue at trial. This discretion exists to protect trial fairness and the presumption of innocence.

In this case, a man was fatally stabbed after a night of drinking alcohol with friends in an apartment. No one witnessed the stabbing. Of the six people who were in the apartment before the stabbing, only the accused was not present when the police arrived. A forensic examination of the crime scene found the accused's blood in several rooms of the apartment, including the bedroom where the victim died. When the accused was arrested one week later, he had a deep cut on his thumb. The central issues at trial were identity and *mens rea*, meaning the accused's state of mind at the time of the offence.

At the trial, the accused brought a *Corbett* application asking the judge to exclude all or part of his criminal record from evidence. The accused had several youth and adult convictions. The trial judge dismissed the application, concluding that the probative value of the criminal record outweighed its prejudicial effect. The accused was convicted of second degree murder by a jury. The Court of Appeal upheld the conviction and concluded that the trial judge's decision on the *Corbett* application was not unreasonable. The accused appealed to the Supreme Court of Canada.

The Supreme Court dismissed the appeal.

Trial judges must carefully assess the probative value and prejudicial effect of prior convictions.

Writing for a majority of the Supreme Court, Chief Justice Wagner explained that an accused's criminal record is a form of character evidence when admitted under section 12 of the *Canada Evidence Act*. Prior convictions may be used only to assess credibility and not to support improper reasoning that an accused committed the offence because of past wrongdoing. This kind of reasoning is improper because it invites the jury to conclude that a person is more likely to have committed the offence simply because they committed other offences in the past.

Chief Justice Wagner also clarified how judges should assess probative value and prejudicial effect under *Corbett*. The most important factors include the nature of the prior convictions, how recent they are, and how similar they are to the offence charged. Convictions that involve dishonesty are more likely to be helpful in assessing credibility, while crimes of violence will generally have little value for that purpose. When prior convictions are similar to the offence charged, there is a serious risk that the jury will be unfairly influenced.

In this case, the trial judge committed errors in principle when weighing the probative value and prejudicial effect of the accused's criminal record. The trial judge overstated the value of certain convictions, including youth offences and violent offences, and improperly considered the strength of the Crown's case. The trial judge should have excluded the accused's youth offences and several highly prejudicial violent convictions.

However, Chief Justice Wagner held that this was one of the rare cases where the curative *proviso* applied. This means that even though errors were made, the conviction can still stand because the evidence of guilt was overwhelming and the outcome of the trial would have been the same. As a result, the appeal was dismissed.

Breakdown of the decision: *Majority:* Chief Justice [Wagner](#) dismissed the appeal (Justices [Karakatsanis](#), [Côté](#), [Martin](#), [Kasirer](#), [O'Bonsawin](#) and [Moreau](#) agreed) | *Concurring:* Justice [Jamal](#) would have dismissed the appeal but found no basis to overturn the trial judge's decision (Justice [Rowe](#) agreed)

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