



[3] Upon reviewing the transcript of the trial and the appellant's record, and submissions of counsel, I am satisfied that there was a misapprehension of evidence as it relates to the expert report of Steve Bennett ("Mr. Bennett"), which is amplified by the court's failure to exercise its gatekeeping function in respect of that evidence. This is sufficient to set aside the judgment and order a new trial. As such, it is unnecessary to review the final ground for appeal.

[4] The appellant provided several examples of the court's misapprehension of evidence. I will focus on the evidence as it relates to Mr. Bennett being proffered as an expert and how that evidence was treated.

[5] The primary concern raised in relation to the expert evidence was whether Mr. Bennett authored the entirety of the report. This Court has, on multiple occasions, commented on the significance of expert reports due to the impact of such reports on litigation. They are heavily relied upon during settlement discussions, and many actions are resolved as a result of such reports. Rule 33.06 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, requires that the report of an expert be written solely by its author: see also *Kushnir v. Macari*, 2017 ONSC 307, at paras. 23-41.

[6] In this case, Mr. Bennett acknowledged that he had not written or dictated the entirety of the report. He admitted that not all the words were his. In cross-examination, the following questions were asked and answers given:

MR. KARIMKHANI: Did you write that report yourself?

A. I'm sorry. I didn't get it.

Q. Did you write that report yourself or somebody else wrote it?

A. I was helped with it a little bit.

Q. Who helped you, sir?

A. Some of the pictures I did not take.

Q. So, because when you were reading it, when the paralegal was asking you a question, it sounded like you were reading it for the very first time. You didn't write that report, did you?

A. Not all of it, no.

See *Canadian Choice Home Services Inc. v. Sibeon*, SC 22-120 (Div. Ct.) (“*Sibeon*”) (Transcript, Cross-Examination of Mr. Bennett, at pp. 96-97).

[7] In re-direct, he was asked further questions and ultimately answered, “Yeah, I actually wrote most of it”: see *Sibeon*, (Transcript, Re-examination of Mr. Bennett, at p. 110). When the lawyer for the defendant asked for an opportunity to further clarify following this answer, the opportunity was denied.

[8] The court failed to permit additional questioning to resolve which part or parts of the report were not written by Mr. Bennett. The other contributor was not identified, and, therefore, there was no evidence as to their expertise. At para. 41 of his Reasons for Judgment, the court concluded that Mr. Bennett merely had some assistance from someone else typing his words (via dictation) and taking photos that were included in the report. This is a misapprehension of Mr. Bennett’s evidence.

[9] Beyond the threshold inquiry as set out in *Mohan*, the court continues to have a gatekeeping function. The Supreme Court of Canada sets this out succinctly in para. 54 of *White Burgess Langille Inman v. Abbott and Haliburton Co.*, 2015 SCC 23, [2015] 2 S.C.R. 182, as follows:

[54] Finding that expert evidence meets the basic threshold does not end the inquiry. Consistent with the structure of the analysis developed following *Mohan* which I have discussed earlier, the judge must still take concerns about the expert’s independence and impartiality into account in weighing the evidence at the gatekeeping stage. At this point, relevance, necessity, reliability and absence of bias can helpfully be seen as part of a sliding scale where a basic level must first be achieved in order to meet the admissibility threshold and thereafter continue to play a role in weighing the overall competing considerations in admitting the evidence. At the end of the day, the judge must be satisfied that the potential helpfulness of the evidence is not outweighed by the risk of the dangers materializing that are associated with expert evidence.

[10] The court found that the witness met the threshold for admission. However, several instances should have caused the jurist to consider whether there was an impact on the expert’s qualifications, including, for example:

- a. Relying on a photo in his report, Mr. Bennett testified that the insulation had been blown in unevenly by the defendant; however, in cross-examination, Mr. Bennett admitted that he caused the unevenness in the insulation by walking through the attic before the photo was taken: see *Sibeon*, (Transcript, Cross-Examination of Mr. Bennett, at p. 101).
- b. Mr. Bennett's report pointed out that the insulation was not blown in to the correct depth; however, on cross-examination, he admitted that the insulation installed by the defendant was fibreglass, and his own experience was with "cellulose" insulation. He admitted that he did not know the correct depth of fibreglass insulation and that his report was not accurate. There was no evidence that Mr. Bennett had any experience blowing fibreglass insulation. His report does not identify the insulation installed by the defendant as fibreglass: see *Sibeon*, (Transcript, Cross-Examination of Mr. Bennett, at pp. 99-100).
- c. Mr. Bennett's report did not mention how many baffles he inspected, yet there are two photos in his report of what he alleged were improperly installed baffles. In re-examination, he admitted that he "grabbed a couple of baffles and they just pulled right out". Further questions about those baffles were not permitted, and it is unclear whether they are the same baffles that were photographed: see *Sibeon*, (Transcript, Re-Examination of Mr. Bennett, at p. 109, lines 25-27).

[11] That the jurist initially accepted Mr. Bennett's qualifications to provide expert evidence did not amount to an error. However, as the court heard that Mr. Bennett did not author the entire report, the court should not only have permitted further inquiry, but ought to have *required it*.

[12] This error is compounded by obvious concerns about Mr. Bennett's expertise related to fibreglass insulation, and his own actions in the attic that impacted the conclusions in his report. The court relied on his evidence without consideration for these obvious errors and, in doing so, further abrogated its gatekeeping function as required by the *Mohan* framework.

[13] When evidence was adduced that Mr. Bennett did not write the report in its entirety and his findings were significantly called into question or undermined by his own actions, the court had an obligation to consider whether it ought to have relied on his evidence at all.

[14] The court did not exercise its gatekeeping function in respect of the expert evidence, and it amounted to a palpable and overriding error. As a result, the appeal must succeed. The judgment is set aside, and a new trial is ordered.

[15] There will be no cost ordered in this matter as the respondent has not opposed the appeal and was not the cause of this proceeding.

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BELLOWS, J.

**Date of Release:** 15 September 2025

**CITATION:** Canadian Choice Home Services Inc. v. Sibeon, 2025 ONSC 5248

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**DIVISIONAL COURT**

**BETWEEN:**

Canadian Choice Homes Services Inc.

Appellant (Defendant)

– and –

Jessie Sibeon

Respondent (Plaintiff)

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**REASONS FOR JUDGMENT**

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BELLOWS J.

**Date of Release:** September 15, 2025