

## Justice Moldaver Veils Prejudicial Personal Attack in Judgment

I would have left matters alone had I not (again) turned up another legal article this weekend quoting the outrageous personal attack of Justice Moldaver of the Ontario Court of Appeal upon my testimony with respect to the matter of Johnson v. Milton.

In December, 2008 I stumbled (by chance) upon a horrendous article written in the Law Times by Robert Todd dated June 23, 2008 quoting the worst portions of Justice Moldaver's attack referring to my testimony as "junk science", "concoctions", "speculation" and seemingly every other adjective the Justice could locate in his thesaurus. Without a single indication of evaluation Mr. Todd perpetuated the prejudice without informing me that he was sending this out to the legal community or allowing me the opportunity to comment in rebuttal. It seemed of no relevance to Mr. Todd that in the original trial where I appeared before Justice Taylor in the Ontario Superior Court of Justice I was referred to as "...a highly qualified expert. His evidence was most helpful". Nor did it seem relevant to Mr. Todd that there appeared to be a vast discrepancy between the praise of Justice Taylor and the outrageous comments of Justice Moldaver. After sending him an e-mail indicating exactly what I thought of his trash journalism I let matters rest.

However this weekend I again found a similar article written on the Ontario Bar Association website by Dawn K. Robertson ("Admissibility of Expert Opinions: The Court of Appeal Issues a Warning about "Expert Generalists"). Again, quoting similar passages from Justice Moldaver's judgment without making me aware of the article or allowing me the opportunity to respond. I must say, I had sent an article to the Litigator magazine dealing with Justice Moldaver's comments only to have the editor decide not to print it.

And so this is the epitome of what these persons deem to be justice, fair play, and innocence until proven guilty. Not one individual allowed me the opportunity to respond. Yet magazines such as the Litigator were all too willing to take my advertising fee. At no time did any of these authors ask very basic questions about why I was an "expert generalist" or why being an expert generalist was so improper.

When I graduated from the University of Western Ontario with a degree in psychology in 1979 the employment atmosphere in Ontario was bleak and I had my sights set on the booming economy of Alberta. By pure chance a professor in engineering science at the University of Western Ontario, who co-ordinated the Multi-Disciplinary Accident Research Team, offered me a position as an Accident Investigator. The Team was funded by Transport Canada and was one of a network across Canada with similar teams existent throughout the U.S. Not only did I see this as a great opportunity to use the skills from my degree but it also meant that I could stay in my home town of London where I was stressed at possibly leaving behind my girlfriend to whom I had become greatly attached and whom I married (and still happily so). This was a crucial decision in

my life and a reason why persons such as Justice Moldaver pursue me with prejudicial comments to this day.

According to Justice Moldaver's thinking the right thing to do was for me to refuse to accept the position with the Accident Research Team because it was not related to my psychology background. I should go off to Calgary to an uncertain future, with no real prospects that I would find a position specific to my training. This was the big mistake of my life for which I should forever be ostracized.

So yes, I was guilty of believing that the Multi-Disciplinary Accident Research Team was truly multi-disciplinary and would include some of those psychological aspects for which I was trained. In fact, up to the point that I joined the team it had been conducting precisely the kind of in-depth accident investigations it was originally set up to do. And up to that point there was indeed a psychological input as the driver's health, tiredness, stress, drug involvement, etc. were all issues of interest in their in-depth investigation reports. However, when I came onto the scene Transport Canada had changed its plans for the team network in Canada and opted for a statistically representative sampling of collisions requiring less detailed investigations and a much larger number of cases. Again, according to Justice Moldaver's analysis I should have foreseen Transport Canada's change of plans - this is the Justice's logic.

I spent 10 years working with the Accident Research Team. It was a tremendous learning opportunity. I was exposed to a wide range of issues and an international group of experts. I attended various conferences. I consulted with many diverse individuals of varying backgrounds and listened to their technical presentations on a wide variety of motor-vehicle, safety-related issues. I conducted a great many examinations of collision sites and motor vehicles. While Justice Moldaver decided I had no experience in the assessment of roadways the fact is that I examined at least 718 collisions sites in those years of which I can provide specific references. In reality I conducted more examinations than that.

Justice Moldaver criticized that I was not employed by any roadway authority and I was never involved in the building of roads. I indicated in my testimony that this was so. But what relevance does that have? What is it precisely that allows one to determine whether a roadway was a contributor to a collision occurrence? Certainly it must involve examination of the roadway where the collision occurred. How many persons who build roads are in the position of travelling to a collision site for the purpose of determining whether the road was a factor? And of these persons how many of them possess the skills, training and knowledge about how collisions occur. Contrast this with an investigator who travels to examine the roadway specifically to determine if it was a factor in causing a collision. Would it not seem logical that such an investigator would become experienced in recognizing roadway problems? It defies logic how the Justice could state I had "...no special skill, knowledge or training" in this area. Particularly when we consider what my experience was after I left the Accident Research Team.

Defense counsel attempted to say that my experience was "...limited to vehicle occupant restraint systems". For this Justice Moldaver provided no evaluation. He simply made a blind judgment regardless of whether there was evidence one way or the other. Certainly my curriculum vitae listed a number of research papers that had been co-authored by myself related to seat-belts. This was a main interest of the team because as a Transport Canada funded entity it was there to promote an obviously effective safety device. But there was absolutely no interest shown by Justice Moldaver in understanding the purpose of the team or what my actual duties were within it. For example a large contribution on my part involved my examinations of physical evidence that existed on seat belts. From those examinations I was able to demonstrate how that physical evidence could identify if the seat belt was worn during a crash and also exactly the manner in which it was worn. This is the knowledge that comes from direct examination of physical evidence. In the same manner as those vehicle examinations I also conducted detailed examinations of collision sites resulting in a similarly in-depth understanding of how those sites related the collisions I was analysing. What was completely ignored in the assessment of my background was that all those research papers relating to seat-belts and injury assessments were generally confined within the 10 year period of my involvement with the Team. If anyone had bothered to take more than a superficial look at that it would have been obvious. But there was little information about the 16 years of my activity after leaving the team. And Justice Moldaver did not comment that he had little information about my activities during that period. He simply drew outrageously critical comments from that without having any knowledge what so ever.

In the rebuttal article that was refused publication by the Litigator I had listed my experience in roadway assessments and bicycle accidents. I had referred to a research paper from the Accident Research Team era dealing precisely with inappropriate barrier systems. In fact that paper was listed in my curriculum vitae but was seemingly ignored by Justice Moldaver.

I also discussed my involvement and testimony at a coroner's inquest regarding median barriers being required along Highway 401 near London. During testimony at that inquest I referred to the inadequacies of the highway with respect to the un-paved shoulders and un-even road surface. Factors that, based on my detailed examinations of the collision sites, were leading to a very high percentage of loss-of-control collisions, and resultant travel across the narrow median. Whether my comments had any influence or not, the bottom line is that the construction of concrete median barriers was begun and today much of Highway 401 is divided by them.

In 1990 I was offered a position with a forensic engineering firm that was opening a new office in Kitchener, Ontario. This was a point in my career when I was becoming disenchanted with my position with the Team. After ten years of gathering data it became clear that there was considerable data missing in the investigations because we were reliant on persons' cooperation to allow us to examine vehicles, conduct interviews and the like. Transport Canada was attempting to alleviate the problem by increasing our sampling rates thus requiring us to examine more collisions with the

same staff. Additionally, a team member who had been actively involved in the investigating was being given a reduced roll placing greater pressure on me.

In this setting I was also confronted with moral issues related to my findings from investigations. Persons were being convicted or suffering losses in civil suits while my investigations were demonstrating that they should not be. The issue came to a head in a specific case of a female driver who was charged with causing the death of an airline pilot simply based on the statements of witnesses who claimed to have seen a similar car passing them in fog. My detailed investigation included the purchase of both vehicles by Transport Canada and a full week of detailed study of both vehicles at their Brock Building. This analysis revealed that those witness observations were simply impossible. The physical evidence was indisputable that this female driver was travelling the opposite direction to what was claimed by the witnesses and the alcohol-impaired pilot travelled into her lane. (The case is noted on the opening page of my website with the names and identifying features removed)

The point is that, as a researcher of this special investigation I had to sit in court and document the proceedings so that I could complete my report to Transport Canada. I listened as witness after witness claimed the same thing. Yet, besides those witnesses the general evidence surrounding the incident supported the fact that each driver was at identified places that would place them travelling opposite to what was claimed by the witnesses. I was certain that surely someone would recognize that the imprecise observations and difficulty in viewing a passing vehicle in fog and drizzle would cause the Judge to question the observations. I was completely baffled as the Judge found her guilty. I felt quite disturbed that we, as an Accident Research Team, although obligated to remain uninvolved would knowingly allow this woman to be sentenced to a prison term when we held evidence that would exonerate her. I was quite disturbed by my fellow colleague's willingness to turn a blind eye and allow this to occur because he had contract obligations to fulfill. Instead I contacted the defense lawyer and sent him my research summary and this was obviously contrary to the prosecution's theory. The defense lawyer presented my summary. The judge was unaware that the general comments made in my summary were based on very detailed analysis and findings. He refused to accept my report claiming it was " a hodge podge of personal conjecture...", etc, etc, very similar in tone to comments expressed by Justice Moldaver. Yet, feeling a moral obligation to explore the truth, the prosecutor delivered my report to an expert at the Centre of Forensic Science in Toronto who agreed with my findings. Finally, a well-established engineer from Toronto who was hired by an insurer also came to the same conclusion as I. Incidentally, the insurer was not going to involve itself in the trial and was going to allow this woman to be found guilty until my report surfaced. If the Centre of Forensic Science and the engineer had not become involved the judge would also have been allowed to let the outrageous comments about my report stand. It was a blind refusal by the judge to listen to the scientific facts that caused him to believe the witnesses without considering that what was being reported was wrong. Not only did he make outrageous comments about my report but he simply refused to inquire whether there was additional information or analysis upon which my generalizations were based. And here is the crucial point. The Judge simply closed his eyes and plugged his ears

because he had already set his mind to a theory, and he would not even consider any other evidence to be heard. While the woman was set free I became disillusioned by my role with the team. How could we sit back and allow injustices like these to take place when we knew what they were. But I was encouraged by the possibility that I could make a difference. That, with the detailed knowledge I possessed about physical evidence and the large number of accidents I had investigated, I could play a valuable role in directing assessments to a proper conclusion.

And so here was another decision in my career that was fateful. Justice Moldaver would appear to say that I had no right to accept the position as an Accident Reconstruction Consultant with the forensic engineering firm. After 10 years of study with a research team that was highly regarded in the community and whose sole purpose was to study motor vehicle accidents, Justice Moldaver would suggest I should pursue a career in psychology when, during those ten years the direction of my activities was more aligned with engineering and medicine. The blindness of this reasoning centres on the belief that everyone follows the path of their original university training, that circumstances beyond an individual's control cannot take them along a different path, and that what we envisaged for our future cannot be directed by simple fate.

Justice Moldaver made the following comment in his decision: "Recognizing, as I do, that expert evidence may not fit neatly into watertight compartments in every case and that shades of grey will inevitably exist, trial judges should do their best to perform the gatekeeper function they have been assigned." This is pure double talk. This is precisely what Justice Moldaver does not recognize. Justice Moldaver has exhibited no recognition or understanding of my background. There was abundant evidence available for him to appreciate that he did not have sufficient knowledge about my activities, particularly those activities after I left the Accident Research Team. This is so because I essentially stopped updating my curriculum vitae shortly after leaving the Accident Research Team with respect to the wording of my activities because I felt enough was enough. I felt I had demonstrated sufficient training and expertise to be qualified as an expert witness. At no time did I believe that someone would nitpick and divide accident reconstruction into minute compartments because to me that was simply illogical.

In my rebuttal article I laid down a listing of the 170 cases in which I was the principal consultant at the noted engineering firm. Of those, 17 cases were officially designated as "roadway assessment" cases where the primary concern expressed by the client was a desire to determine something about the roadway design, signage or maintenance that might have affected the collision. While this would appear to be a generally small number compared to the total number of cases the point is that most accident reconstruction assignments involved an element of roadway review. This is what is so completely twisted in Justice Moldaver's comments. I stated this in my testimony. A reconstruction cannot be performed without knowing whether the roadway played a role. It should seem so simply obvious. If I were to say that Driver A was responsible for the collision how could I make that claim if in fact there was a gaping hole in the middle of the road that the driver avoided resulting in his crossing the centre line. It defies logic that someone would say, well Mr. Gorski, you did not conduct a

roadway assessment in this case because it says here you were asked to determine whether Driver A crossed the centre line of the road. How can you reach someone who maintains such logic?

I stated throughout my testimony that Accident Reconstruction is a difficult term to define as many persons hold differing thoughts. I had always defined it scientifically as it was discussed in the midst of the experts I encountered at the University of Western Ontario Accident Research Team. Researchers at the U.S. National Highway Traffic Safety Administration, Transport Canada, and international entities often referred to the Haddon Matrix as defining Accident Reconstruction and I discussed that matrix in my testimony. The Haddon Matrix is a nine-celled grouping comprised of three columns called Pre-Crash, Crash and Post-Crash. Similarly three rows are entitled Human, Vehicle and Environment. Accident Reconstruction involved the mingling of these rows and columns. So part of an accident reconstruction might involve the Pre-Crash and Human cells. Those issues might come close to the field of psychology where the interest is on the drivers characteristics before the collision occurred. Similarly another involvement might be the Crash and Vehicle cells. Here we might be involved in the safety performance of the structure of the vehicle during the crash. And so on.

The point is that Justice Moldaver would like to pigeon hole my expertise and experience into two of these cells and claim that I cannot examine any others or that I have no experience, knowledge or training in any of the others. That is simply illogical. While for the purposes of a trial and testimony it would be nice to have experts who only deal with narrow matters because it is possible that they may not be as expert in others, that is not the way accident reconstruction is performed, nor can all experts be pigeon holed into these narrow categories.

As an accident reconstruction consultant I receive assignments from my clients who are lawyers and insurers. They call me with motor vehicle accident cases because that is exclusively what I handle. Let me say that my competitors who are predominantly engineers will also receive similar cases but they will also handle fires, explosions, building collapses and accident reconstructions. On one occasion the engineer is an accident reconstruction expert and on the next he is a fire expert and on a third he assesses the structural integrity of a building. I refuse to handle such cases. I advertise myself strictly as someone who examines highway accidents, predominantly of motorized vehicles. So it becomes quite illogical for Justice Moldaver to claim that I am someone who purports to know everything about everything when others in my field spread themselves wider than I do.

When I receive accident reconstruction cases I cannot tell where they will lead me. Certainly the client might have some idea or concern. But that does not mean that the eventual investigation and conclusions will come to that. It is precisely the reason why someone like me is consulted: because someone does not know what happened and is asking for my advice and expert analysis. By Justice Moldaver's logic I should conduct my examinations and analysis and then tell my client that I cannot proceed because the case involves a roadway issue instead of a speed issue. Realistically speaking what

consultant would survive six months in this function by acting so pompously. I then charge my client my fees and give him nothing in return? Is this what Justice Moldaver believes should happen? Does the client then re-hire an roadway expert? And perhaps next he hires a medical expert because he thinks the occupant's injuries are not quite right. And so there are six or seven experts. Expert #1 can say something about the speed but he knows nothing about the road. Expert #2 can say something about the road but knows nothing about injuries or speed. And so on. And when trial comes along there is an endless progression of experts each providing their opinions on narrow aspects which may or may not be consistent with the global picture. Is this what Justice Moldaver refers to as trial economy?

Let me carry on with my background for a moment.

After five years at the forensic engineering firm I was offered a choice that I could not refuse. Business at their new office was not what they expected and they wanted me to take a commission with a possible wage loss. I refused.

In 1995 I opened up my own consulting business, Gorski Consulting, and have been operating on that basis to the present date. What was not made clear was that the Johnson matter was a case that I originally inherited as an employee of the forensic engineering firm. So it was not something I asked for. It was a case I was required to take on as part of my employment with the firm. And one would presume that I was given that file because my employer felt that I was the one who had the expertise, knowledge and training to complete it. Another engineer took on the file for a short while in transition when I left the firm, but the client retained me, again, presumably because he felt I had the expertise, knowledge and training to complete it better than the engineer who was assigned from my old firm.

Again, at Gorski Consulting I continued on with the activities I was involved in at the engineering firm, and to some extent, at the Accident Research Team. I believe I said on several occasions during testimony that my activities between the forensic engineering firm and at Gorski Consulting had not changed. So from 1990 to the present date I have operated under an essentially identical capacity. I stated that at testimony. Through some bazaar, unexplained logic Justice Moldaver ignored that. Without any knowledge or information that could guide him he simply blasted forward, insulting the intelligence of Justice Taylor and making wild conclusions based on thin air. It was obvious that (at trial) defense counsel never challenged me when I stated I had the experience that I did. And here is the crucial issue. Because as a Justice of the Court of Appeal Moldaver can claim that he cannot go searching for information beyond what was provided at the original trial. So if no additional information was revealed of my experience then it allowed Justice Moldaver to simply say there was none. Rather than doing the ethical thing of admitting that there was no challenge to what I stated, rather than admitting he had insufficient information about my experience, he set forth to destroy my reputation, knowing fully-well that the decision would be used by persons like Mr. Todd and Ms. Robertson in the way that it was. Baseless, groundless hearsay, behind my back, by unscrupulous persons whose cowardly conscience told them it was

OK to destroy someone's reputation without informing me of their actions or giving an opportunity to respond. This coming from persons representing legal groups such as the Ontario Bar Association and the Lawyers Weekly.

If they had bothered to check out their facts an analysis of my activities at Gorski Consulting would have revealed very similar results to what was shown at the Accident Research Team and the forensic engineering firm. In the 225 cases that I handled at Gorski Consulting between 1995 and 2005, 44 of those officially involved roadway assessments, and 11 involved bicycle accident analyses. Again while this would appear to be rather small my activities were broken down into 24 categories such that somewhat related activities existed in several cells. For example the highest ranked activity was site examinations of which I performed 162, next was vehicle examinations at 140 and speed assessments at 104. So although it would appear I was involved in only 44 cases where a clear roadway assessment was involved, in 162 of the 225 cases I was involved in examining the site of the collision, not only to document any collision evidence but precisely to assess whether a roadway issue could have been a factor in the event.

If one were to add up my activities at the three (AR Team, engineering firm, Gorski Consulting) it would have been clear that I examined more than 1000 collision sites in the 26 years before I testified at the Johnson v. Milton trial. In the cases from 1990 to the present day I relied, and continue to rely, on manuals of standard practice and application of roadway design, signage and maintenance. No less than the engineers that I worked with through 1995 and who are now my competitors in the field to the present day. None of these details were ever provided at trial because I was never challenged on the issue. And I was never informed that there would be a challenge to this issue until the opening questions of my testimony. Justice Moldaver knew this. He had the trial transcript in his hands. He knew what I stated during my testimony. Where is the responsibility by a Justice of the Ontario Court of Appeal to admit that it does not have sufficient information to challenge a trial Justice's decision?

Justice Moldaver's decision came down to this, that because of my background I was an "expert generalist" and expert generalists could be wrong. That was the logic. Not that I **was** wrong. Not that he referred to instances in my testimony where I was wrong. There was not a single instance pointed out in the decision where I was wrong in what I said.

Instead it was said that I did not have the expertise to comment on why the Johnson bicycle lost directional control because I had no experience in roadway or bicycle assessment. In 26 years and 1000 site examinations I did not possess those qualities. Yet, Justice Moldaver felt it was reasonable for him to take over the reconstruction of the events on his own, with absolutely no guidance from any other expert since he just outlawed the information from the only expert to give testimony on the matter. On his own expertise in accident reconstruction he determined that the evidence of the Johnsons' reckless speed was "much richer" than reported by Justice Taylor. He then referred to two points of fact to support him: 1) that the witness Marshall claimed that

the speed was so high that he wondered how the bicycle was going to stop and 2) that Mrs. Johnson herself told her husband she thought they were going too fast.

This was the "much richer" evidence upon which Justice Moldaver felt privileged to scold Justice Taylor and destroy my reputation. But neither Justice Moldaver nor any of the authors of the scandalous articles ever evaluated whether the content of those above-noted statements had a basis in scientific fact. This because Justice Moldaver could not make that assessment because he did not have the skills of an accident reconstructionist and he just buried any evidence of a technical nature that could have assisted him. I had discussed this in detail in my rebuttal article which legal magazines such as the Litigator ignored.

The fact is that when Marshall made his initial observations of the Johnson bicycle it was way up the hill as far as 180 metres before reaching the narrow bridge and another 30 metres before the area of impact at the escarpment wall. At the estimated speed of 45 kilometres per hour I stated in my rebuttal that the Johnsons could have stopped their bicycle 8 times over before reaching the area of impact. Was this a calculation that Justice Moldaver performed and determined was incorrect? No, he simply ignored it. The witness Marshall was making a statement that, based on science, was incorrect, wrong, impossible. The Johnsons were in no jeopardy of being unable to stop at that point. What developed later was a result of the road conditions and that is what made it impossible for the Johnsons to stop until they struck the embankment. The position that Justice Moldaver took was that no one was needed to tell him how this event occurred because only he was capable of making that assessment. In contrast Justice Taylor took the proper route, humbly acknowledging he did not have a technical grasp of all the issues and therefore it was necessary to allow all evidence to be revealed so that he could make an informed decision. Justice Moldaver on the other hand decided he knew everything about the technical issues at hand, more so than an expert of 26 years in the field. Justice Moldaver knew everything he needed to know about the qualifications and expertise of an expert, despite the very meager information about large portions of an expert's background.

On the second point, Mrs. Johnson was quoted as saying she felt they were going too fast. Although I was present in court during her testimony I do not recall those words. But again, here is a statement by an individual that needs to be evaluated. It was clear from her testimony that there had been previous issues between her and her husband about her lagging behind on bicycle trips and this was partly the reason why they purchased a tandem bicycle. So there could be an understandable dispute between them as to what was defined as fast or too quick. But where is the scientific basis upon which Justice Moldaver determined that Mrs. Johnson's words meant they were travelling in an unsafe manner? How does one know what speed should be assigned to a comment such as this? Was Mr. Johnson capable of stating "No, you are wrong, I am in control of the situation and this is a speed that is safe"? If Mr. Johnson had survived and was there to make the comment would that not indicate a conflict of opinion. Clearly what we have is a comment that could mean many different things, that could have

been said for many reasons. Here are the Justice's own words about making unscientific conclusions:

"The problem with such witnesses is that while they may appear knowledgeable and generally come across well, upon closer scrutiny, their opinions may well turn out to be little more than concoctions consisting of guesswork, speculation, commonplace information and junk science, with a hint of valid science thrown in for good measure."

Well, that is precisely the point. Where is Justice Moldaver's scientific analysis that led to the conclusion that Mrs. Johnson's or Mr. Marshall's evidence was scientifically correct and reliable? Did he perform the calculations of how much braking distance would be required to bring the bicycle to a halt? Did he evaluate the roadway slope like I did to calculate the effect of the acceleration due to gravity? Did he perform experimental testing with a tandem bicycle like I did, involving two skilled bicycle experts, and then report his findings based on the testing like I did? Did he have the technical expertise to evaluate the injuries to the riders and the damage to the bicycle to come to a scientific conclusion about what that evidence meant in terms of the dissipated kinetic energy and therefore the collision severity? Did he have the experience of examining the injury patterns of occupants from hundreds of collisions to support his estimation of the collision severity like I did?

The following text is taken from Justice Moldaver's decision and it reveals the quality of his reasoning. He reviews Justice Taylor's actions and the proceedings of the trial. In doing so he discusses Justice Taylor's observation that "there was no sign south of the Glenorchey Bridge warning motorists or cyclists to reduce their speed from the posted speed limit of 50 kilometres per hour to something considerably lower at which the turn could safely be negotiated". Justice Moldaver wrote:

*Pausing here, I note that irrespective of the signage, the accident occurred in broad daylight and the embankment was not hidden from view. Constable Michalski, a police officer who assisted with bicycle tests at the scene two days after the accident, testified that where the road begins its downward slope 283 metres south of the bridge, a cyclist would have a "perfect view" of the bridge and the embankment. Other evidence, including evidence from the respondent's expert Mr. Gorski, established that a cyclist traveling northbound would have a clear view of the embankment for a distance of at least 155 metres and possibly as much as 180 metres south of the embankment.*

Now here is the crux of the matter. Justice Moldaver believes that, if you can see the face of the escarpment and the sharp right turn at distance of 180 metres then it should be obvious that you should immediately recognize this as a danger and a threat and that you should slow down immediately. And this is the person that we rely upon to make the most important legal decisions in Ontario. And this is the person who is

allowed to refer to my analysis as "concoctions consisting of guesswork, speculation, commonplace information and junk science..." etc, etc.

What relevance is there whether Robert Johnson could see the face of the escarpment wall at 180 metres or 200 kilometres away for that matter?" Let me rephrase that. If the escarpment wall could be seen at a distance of 200 kilometres (perhaps Johnson could have used a telescope) it is logical to conclude that at this distance of 200 kilometres Johnson should have slowed down? What is the fallacy in this logic?

The obvious fallacy is that there is no need to begin slowing down because the hazard is much too far away. Because Mr. Johnson could easily brake to a halt from a distance of 2 kilometres, or from a distance of 1 kilometre. And, to Justice Moldaver's uninformed surprise, Mr. Johnson could easily brake to a halt from a distance of 180 metres, but eight time over, despite the presence of the steep downgrade. This is precisely what I indicated during my testimony. This is precisely why Moldaver should not be a justice of the Ontario Court of Appeal. Because he believes he is so superior he does not understand that his ego prevents him from recognizing that he is wrong.

There was no danger to Mr. or Mrs. Johnson at the point when they made their turn and were able to see the escarpment wall at a distance of 180 metres. Mr. Johnson likely knew that and my testing with a similar tandem bicycle proved that. What caused this collision was that the road surface changed. While it was relatively smooth through the approach to the bridge it suddenly contained "undulations" precisely at the critical point when braking was required. And these undulations could not be seen from the distance of 180 metres or not even when Johnson reached them. Employees of the Town of Milton should have been aware of this deficiency as there was an obvious pattern of vehicles colliding with the escarpment wall.

Even at the distance of 60 metres from the wall, if the roadway surface had been predictable, as it was throughout the distance leading to that point, Johnson still could have come to a halt from a speed of 45 km/h. Justice Moldaver used concocted logic, guesswork, speculation and junk science to completely ignore this fact. These are the very words he used to defame me under the protection provided to him as a Justice of the Court of Appeal. This cavalier flinging of unsubstantiated liable disgraces the office that he holds and the lack of accountability for his actions is inexcusable.