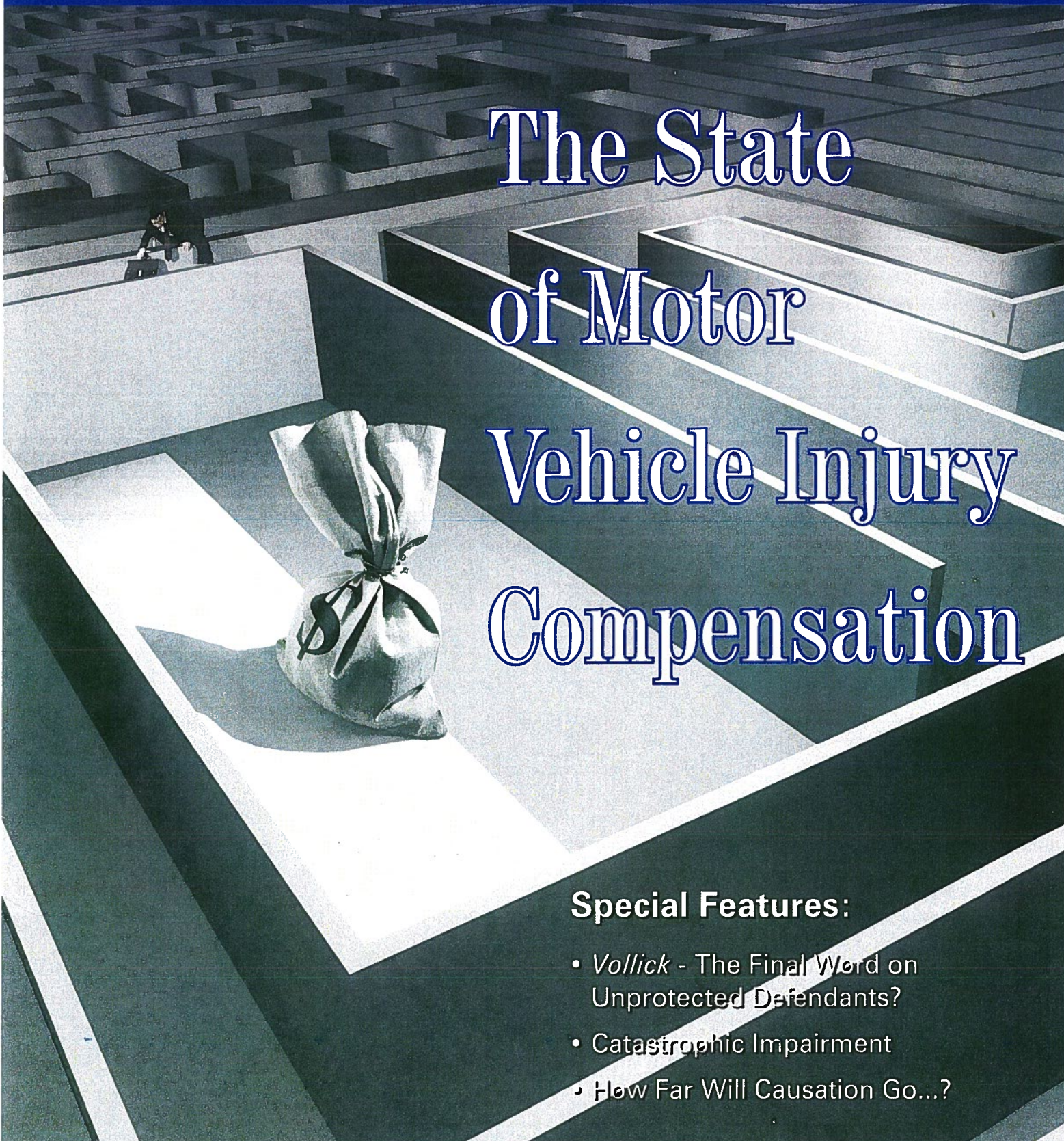


# THE Litigator



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A large, complex maze made of grey concrete blocks. In the distance, a small figure of a person is visible. In the foreground, a money bag with a dollar sign is placed on a path. The text "The State of Motor Vehicle Injury Compensation" is overlaid on the right side of the maze.

## The State of Motor Vehicle Injury Compensation

### Special Features:

- *Vollick* - The Final Word on Unprotected Defendants?
- Catastrophic Impairment
- How Far Will Causation Go...?

# People over Profits

by Russ Howe

Our ATLA colleagues have an organization with a name title that sums up the nature of the western approach to justice: *People over Profits*. When you come right down to it, there's little more to our system of democracy than that.

We are privileged to live in a democratic society where our traditions of legal protection stretch back for about a thousand years. We can vote, travel, speak out, have a reasonable expectation of privacy, and when we are wronged we can seek redress against a wrongdoer through either the criminal or civil justice system. This is one of our most precious possessions, and we all have a duty to preserve these rights for Canadians when organizations, foreign or domestic, try to deprive us of them.

While it is each citizen's duty to protect our democracy, there are two groups that shoulder a higher obligation to preserve our rights. These people are our elected representatives and the judiciary. Their duty rises to the level of a "sacred trust" because they hold in their hands the essence of what makes the western democratic tradition great. Let us take a moment to see how well our elected representatives are safeguarding the precious flame of democracy.

In Ontario, the tort system that protected the rights of individuals for a millennium has been plundered and savaged in the name of political expediency and pandering to big insurance dollars. Our politicians have either abandoned their sacred trust, allowing our rights to be trampled in the dirt, or they have blindly swallowed the lies the insurance industry told them about a fictional economic crisis.



Regardless of the answer, they have failed in their duty to protect our democratic tradition by stealing the rights of innocent accident victims in order to feed the insurance industry's hunger for obscene profits.

The events surrounding the last changes to the Ontario auto tort system are particularly instructive. After the writ dropped, the last Conservative government caved to immense pressure from the insurance lobby. They passed a series of regulatory changes that doubled the morally indefensible deductible on pain and suffering and expanded the verbal threshold to end the rights of large numbers of accident victims who need redress from our justice system. How was this achieved? Through the invention of a fictional crisis by a healthy industry and the sale of this fiction to a group of politicians who were already inclined to help their friends in big business. The timing of these changes is crucial in comprehending these underhanded political machinations. The insurance industry was desperate to push through "reforms" late in that year before the

government changed because they were fully aware that if the rights-slashing project was delayed into the next year, their own figures were going to show strong profits that would destroy their carefully-cultivated illusion of an industry in crisis. Their window of opportunity for this coup was narrow, but the complete lack of resistance from the government of the day allowed them this underhanded victory.

Should we believe that the economists and actuaries did not know in 2003 that they would show strong profits that year and then "unprecedented" profits in 2004? Of course not. They were more than aware of the money pouring into their trough when they were telling our elected guardians that there was a crisis and that if more rights were not sliced away from accident victims, they would have to raise premiums to stay afloat. The industry simply spewed a batch of disingenuous propaganda and our politicians, desperate to stay in office, bought it, hook, line, and sinker. This is how the last government preserved our rights and fulfilled their "sacred trust."


The question we face is whether or not we can expect any better now that there has been a change of government. There is hope circumstances might be better with the current regime. I have seen small signs that this regime might understand its duty to safeguard our democratic rights.

Alongside the "sacred trust" to preserve our democracy, elected officials have a similar duty to protect the environment, to preserve our beautiful land for this generation and

those that follow. The current government has taken a number of positive steps to ensure that this happens. The Liberals portray themselves as the party of "the little guy" and have recently passed legislation to protect consumers from predatory commercial practices. These are good signs. This government has also taken steps to eliminate the malfunctioning Designated Assessment Centre system. Although the regulation that eliminated the DACs has created new problems to be wrestled with, the elimination of the DACs is supported by OTLA and will benefit accident victims in Ontario. Draconian legislation on future care costs in medical malpractice cases has also been softened to be fairer to the victims. It is possible that this government, despite fighting against fair treatment for autistic children, understands its duty to preserve and enhance the rights of its citizens. There is hope that it will prioritize people over profits. The real test looms on the immediate horizon.

The insurance industry supported the elimination of the DACs. The time has come to see if the current Liberal

government has the courage to restore stolen rights back to Ontarians in the face of opposition from the insurance lobby. It is time to roll back the threshold and eliminate the deductible completely. It is time for this government to protect its citizens by prying the jackboot of insurance greed off the throats of innocent Ontarians who have been injured in car crashes.

Throughout our history, tort rights have formed a critical pillar of our democratic system, a system that Ontarians have been nobly fighting and dying for over generations. One can only wonder what the men and women who gave their youth, health, and lives to preserve our tradition of freedom in the face of tyranny would think about "tort reform." Would these heroes, who understand the meaning of injury, scarring, and the loss of loved ones, respect a government that steals rights from people who suffer similar losses? Our veterans and their families gave all they had to protect our democratic rights and freedoms, including tort, not to enhance the profits of foreign-owned insurers. We're not asking our politicians to make heroic sacrifice, merely to do their duty to restore our basic rights by putting "*People over Profits.*" 

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**DURWARD JONES BARKWELL & COMPANY LLP**  
CHARTERED ACCOUNTANTS  
120 King Street West, Suite 780  
Hamilton, Ontario, L8P 4V2

Tel: (905) 525-9520

Fax (905) 522-3113

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