

***Personal Injury:
Insurance Reform (Bill 53)***

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**HAS BILL 53 DONE AWAY WITH SUBROGATED CLAIMS FOR LONG TERM DISABILITY,
INCOME REPLACEMENT BENEFITS AND DRUG AND MEDICAL TREATMENT
BENEFITS, SUCH AS THOSE PROVIDED BY BLUE CROSS OR AN EMPLOYEE BENEFIT
PLAN?**

I. INTRODUCTION

The doctrine of subrogation that was once set out in equity or contract has now become, by way of s. 626.1 of the Alberta *Insurance Act*, R.S.A. 2000, c.I-3, a matter of statutory interpretation. It is anticipated that the effect of Bill 53 will be widespread and result in the end of subrogated claims for income replacement benefits and drug and medical treatment benefits. Although it appears clear that it was the Legislature's intention to do so, it remains to be seen whether insurers will challenge the new provisions of the Alberta *Insurance Act* and further yet, how the Alberta Courts will interpret such provisions.

II. THE DOCTRINE OF SUBROGATION

The doctrine of subrogation is a "legal device whereby one person, upon paying a debt or discharging a liability of another, is entitled to "stand in the shoes" of the creditor and enforce against the debtor all rights which the creditor himself could have asserted."¹ The effect of subrogation is that the insurer can be in no better position than the insured against a third party. However, the reverse also holds true in that the principles of subrogation prevent the insurer from being unjustly enriched. In the case of disability insurance, courts have found some disability insurance policies, particularly long term disability policies, to be contracts of insurance thereby giving rise to equitable subrogation interests.²

The following general principles concisely summarize the doctrine of subrogation.

¹ Fridman, *Restitution*, 2d ed. (Carswell: Toronto, 1992) at page 398 [hereinafter *Restitution*].

² Duncan McDuff, "What do *They* Want? The Subrogated Interests of Disability Insurers in Personal Injury Claims for Damages Including Loss of Income" (LESA Seminar, 24-28 April 1999) [unpublished] [hereinafter "What do *They* Want?"].