

*Crown Liability*

no sand on it". This clause, if it is properly applied and if the plaintiff is well advised and diligent, will help the plaintiff's claim rather than hinder it. I think my hon. friend is quite right when he says that if there were no provision like this at all, and it developed that no complaint had been made to the crown for a period of ten days or two weeks, the judge would be rather sceptical when no other person had seen it, as to whether the injury was actually caused by this allegedly icy condition or whether it was due to the plaintiff's own negligence.

**Mr. Green:** But I do say that in most cases there would be an employee of the crown right on the premises at the time of the accident. He would know about the accident, and it would be his duty to make a record of the condition at that time. This would be the normal case. If the person has been seriously injured he may be in hospital for quite a long time. In fact, the more seriously injured he is, the less likely it is that he will be able to get off any written notice with the details of his claim within a period of seven days from the time of the accident. There certainly should be some leeway given so that a man would not be necessarily out of court after the seven days. There should be some provision so that in a bona fide case, where the person was unable to get in a notice within the seven days, he would not be deprived of his action. I think the section is too tight as it is worded at the present time.

**Mr. Fleming:** I should like to support what has been said by the hon. member for Vancouver-Quadra. This section as it stands is very harsh. It is not a qualified bar to an action, it is an absolute bar. If that notice in writing is not given in seven days it is an absolute bar.

We are told we are creating a remedy for people who suffer wrongs, but here is a section which says that if notice in writing is not given in this prescribed manner within seven days that right of action is completely destroyed.

The minister has taken a very simple case. He has assumed that the individual is perfectly conscious after the accident; and in the case he put, of course seven days is longer than the injured person needs. But let us consider the case of a man who may be unconscious for a month after the accident. What is to be done then? He may be far from friends, far from family and far from home when this happens. It may be all very well for the crown to insist that it should have prompt notice in order that it may investigate the conditions that are complained of. But there is another side to the story that I think

has not been taken into account and certainly has not been mentioned by the minister.

Let me give the minister a parallel case, because I have had a good deal of experience with this particular provision. Under the provisions of the Ontario highway improvement act the crown in the right of the province is liable for damages suffered by any person using the queen's highway as a result of conditions of disrepair. There the requirement is that notice in writing of injury shall be given within ten days; it is not seven days but ten days. Then there is this further provision, that failure to give the notice is not an absolute bar if the failure to give the notice is such as not to have resulted in prejudice to the crown.

I think on reflection the minister will realize that where a provision of this kind is written in terms of absolute bar to the action, a limitation of this kind is not only unreasonable but harsh, Mr. Chairman. Take, for instance, the case of a man who has sustained perhaps an extremely serious injury. It may be a concussion resulting in a prolonged period of unconsciousness far exceeding seven days, with nobody else to give notice on his behalf. Then he is told that he has completely lost any right he had against the crown and there is no right to be relieved of this bar. It is not a conditional bar; it is an absolute bar.

**Mr. Garson:** Can my hon. friend give any further details with regard to the modification of the bar in the case of the Ontario statute to which he referred?

**Mr. Fleming:** Yes. I have not the exact language of the statute here but it runs to this effect. If the court—and it is left to the court to decide when the case comes before it in due course—is satisfied that no prejudice has resulted to the crown from failure to give the notice within the prescribed period, the court has power to relieve the plaintiff from the effect of the failure to give the notice. I think that is a reasonable provision.

I would urge on the minister that even with such a saving provision, a period of seven days is still too short. It is going to take some considerable time for the general public to come to know of this new legislation which is creating new rights. It seems to me that a period of seven days is unreasonably short in the case of new legislation giving rise to new rights. If the minister will follow a suggestion, I would propose that this section should not be written in terms of absolute bar but only conditional bar, and that the