

[Deputy Chairman: Mr. Musgreave]

[8:39 a.m.]

MR. DEPUTY CHAIRMAN: Good morning, ladies and gentlemen. The committee will now come to order. First I'll ask Parliamentary Counsel to give his report and then swear in the witnesses.

Mr. Clegg.

MR. M. CLEGG: Mr. Chairman, the first Bill before the Committee is Bill Pr. 16, Leslie Roy Peck Adoption Act.

The purpose of this Bill is to create a lawful relationship of father and son between Alistair Mackintosh as father and Leslie Roy Peck as son, notwithstanding that Leslie Roy Peck is over the age of 18 years and the Child Welfare Act does not provide for the adoption of persons over 18 years. The petitioners have filed with the Assembly an affidavit of Frank Peck and Marjorie Peck which swears that they are the lawful natural parents of Leslie Roy Peck and freely and voluntarily consent to the adoption which is sought by this Bill.

The Bill does not contain any other provisions apart from the adoption, apart from a legal name change. So if the Assembly approves the adoption, it will also authorize the name change, to make it unnecessary for a further application for name change.

[Messrs. Mackintosh and Peck were sworn in]

MR. DEPUTY CHAIRMAN: Mr. Carlyle, would you like to make your presentation on behalf of the people you're with?

MR. CARLYLE: Thank you, Mr. Chairman, and good morning to the ladies and gentlemen of the committee. My name is Brent Carlyle, and I am a barrister and solicitor practising in the town of Olds, Alberta, which, I guess as a bit of a plug, is in the constituency of the hon. Roy Brassard. I am here representing Mr. Alistair Mackintosh, who is sitting, obviously, to my immediate left, and also Mr. Leslie Roy Peck, who wishes to be adopted by Mr. Mackintosh. Basically, what I would like to do is to set out sort of a brief history of the matters that create the desire of these people to have a private Bill passed by the Legislative Assembly. Basically, what I will do is give a short history.

I will refer to these people as Alistair and Leslie because I think that's a little less formal. Alistair is 47 years of age. He is a farmer who has lived in the Sundre area, and he has been a farmer all of his life. Alistair, himself, was adopted at the age three months, and throughout his lifetime, as I say, farmed. He married in 1976. Unfortunately, that marriage ended in a divorce in 1980, and there were no children that were the product of that marriage, nor any other children that would be natural children of Alistair. Les is 21 years of age, almost 22. He has lived in the Sundre area since he was about five years of age, and his parents also reside in the town of Sundre.

From 1973 Alistair has had severe health problems. First of all, he had very serious back problems, and he more recently has been diagnosed as having cancer. I believe that diagnosis was first made in about 1978. This has created a situation where his doctors have advised him that he has to quit farming. He therefore over the years since 1973 has hired people to assist him in his farming operations. At one time, just for a matter of history, Les's two older brothers, namely Rodney and Greg, also worked for Alistair Mackintosh. Eventually, Les came to work for Alistair, in 1981, and at first it was simply a matter of having somebody out there to assist in the farming operation on the weekends. Then it became a matter of Les working for Alistair

for the whole summer of 1982, and eventually what happened was that Les came to work for Alistair full-time, after 1982.

Now, this is not simply, in my mind, -- and if you wish, Alistair and Les will confirm that -- a situation of an employer/employee relationship. Obviously, we wouldn't feel that it would be necessary to pass a Bill for that effect. It's a relationship that has developed into a very, very close relationship between these two people over the years. Eventually, due to Alistair's health problems, he is going to have to quit farming entirely. His desire and his wish is to be able to have Les continue working on the farm and to give him a proper start in life. Now, this is something that is a philosophy of Alistair's, if I can put it that way. Basically, what he wishes to do is pass along the same type of contributions that his mother made to the province of Alberta.

I have on hand a letter, actually, from the Minister of Youth, the hon. Roy Clark, dated 1969, where it refers to ceremonies that were granted by the Department of Public Welfare. There was apparently a certificate or some honourable mention, if you like, of Alistair's mother, who over her lifetime obviously, number one, adopted Alistair, but beyond that had been a foster parent to four other children over the years. Her philosophy was much the same as Alistair's; to wit, she wished to benefit other people who perhaps were less fortunate than herself. That's the same thing that Alistair wishes to do for Les. In other words, it's a matter of passing along that kind of opportunity to somebody that he has obviously grown very close to.

As indicated by Mr. Clegg, Mr. and Mrs. Peck, Les's parents, have consented to this Bill, to the private adoption of Les by Alistair. I have met with them myself in my office in Sundre. I have discussed the matter with them, and I certainly am of the impression and the opinion that they certainly are happy with this arrangement in the event that this private Bill is passed. I understand from speaking to Les that actually at the time that he grew up with his parents, he didn't enjoy a very, very good relationship with them, although that has become a better relationship since he has gotten out on his own. But in any event, both Mr. and Mrs. Peck, from my meeting with them I have come away with the feeling that they do give their blessing to this particular union, if I can call it that.

I suppose to summarize basically what these two people are trying to do today, they are trying to legitimize, if I can put it that way, a father/son relationship that has developed over the years in much the same way as a ceremony of marriage would celebrate a relationship between a husband and a wife. I therefore ask the members of the legislative committee to consider this private Bill in order that Mr. Mackintosh may adopt Mr. Peck and have him as his own son.

Thank you.

MR. DEPUTY CHAIRMAN: Alistair Mackintosh, do you agree with the evidence provided by your solicitor in support of the Bill that you have made application for?

MR. MACKINTOSH: I do.

MR. DEPUTY CHAIRMAN: Leslie Roy Peck, do you also agree with what the solicitor said as evidence in support of this Bill?

MR. PECK: Yes.

MR. DEPUTY CHAIRMAN: Do the committee members have

any questions? If not, could we have a motion? [interjection]
Sorry. Mr. Clegg.

MR. M. CLEGG: Mr. Chairman, I'd just like to ask a couple of questions to get some facts on the record so that when the committee is considering this later on, we have some of those facts.

I'd like to ask Leslie Roy Peck in what year he commenced regarding the home of Mr. Mackintosh as his home as opposed to the home of his natural parents.

MR. PECK: In 1982.

MR. M. CLEGG: And from that time did you generally live at the farm with Mr. Mackintosh?

MR. PECK: Yes, I did.

MR. M. CLEGG: Prior to that time, were you living with your natural parents, or had there been any time when you did not live with either of them?

MR. PECK: No, I lived with my parents before that.

MR. M. CLEGG: Thank you. Those are all my questions, Mr. Chairman.

MR. DEPUTY CHAIRMAN: If there are no other questions from the committee . . .

Mr. Clegg.

MR. M. CLEGG: Mr. Mackintosh, have you made a will which provides for Mr. Peck to be your heir?

MR. MACKINTOSH: Yes, part ways. Yes.

MR. M. CLEGG: When did you make that will, Mr. Mackintosh?

MR. MACKINTOSH: It was back in January.

MR. M. CLEGG: Thank you. Does that will transfer the farm property entirely to Mr. Peck, or partly to him?

MR. MACKINTOSH: Part, yes, to him.

MR. M. CLEGG: Thank you.

MR. MACKINTOSH: I would like to say one other thing. My mother and dad brought up a family of nine themselves. I have nine other brothers and sisters, but they're not . . . They had eight of their own before they adopted me. So I can't see . . . I had another brother that was brought up here, and we moved up here from Saskatchewan in 1950. We had one other boy, and he went back to Saskatchewan. She had three or four kids out of the Regina welfare in Saskatchewan, looking after them, but she couldn't control them, so they went back to the welfare home in Regina. I was taken out of the Regina welfare at three months of age. I'd like this to carry on, if I could. I appreciated what they did for me, and I'd like to do it for somebody else.

MR. BRASSARD: Yes, Mr. Mackintosh. You could accomplish leaving the property to Leslie with a will, so obviously there's far more to this than just transferring the property to

Leslie. It goes much deeper than that.

MR. MACKINTOSH: That's right. Well, it's one way or the other. I could leave it to Les, yes, but I'm going to have to quit sooner or later. My health is not that good. I've got cancer of the blood. I've had it for 10 years; I'm fighting it. In '73 the doctors told me to quit, which I did for two years because I couldn't work. In '75 I started back farming again, and I just couldn't handle it. I'm either going to have to quit farming, which is all I know, or if Les is there to help me to carry on the operation to an extent, I can help to a certain degree. But if it doesn't turn around, there's not too much future for Les. He's going to have to go out and find other work too. We've acquired in this last year, he and myself -- I've got a half section there at home and a quarter rented beside me. He's acquired three quarters himself this last summer through rental to operate on his own. We're running right now about 70 cows, and we've got 100 head of yearlings out on grass. I'm going to have to dispose of my cows or a portion of them and so on and so forth in the fall if things do not go the way they should go.

MR. BRASSARD: But this isn't a multimillion dollar operation. You're farming a quarter section and you're renting another section between the two of you.

MR. MACKINTOSH: I'm farming a half section which was left to me by my parents. That is it; the rest is rental.

MR. BRASSARD: Thank you.

MR. DEPUTY CHAIRMAN: Mrs. Hewes.

MRS. HEWES: Thank you, Mr. Chairman. To Leslie. Up until now, this has been an employee/employer arrangement. That is, you've been on a salary from Mr. Mackintosh, have you?

MR. PECK: No. I've had some out jobs and then just help him on the farm and stay there.

MRS. HEWES: So if I can be clear about that then, Mr. Chairman, Leslie, you don't work full time for Mr. Mackintosh?

MR. PECK: As of now, yes.

MRS. HEWES: As of now, you will be.

MR. MACKINTOSH: Crop sharing is what we were working on.

MRS. HEWES: Okay. Mr. Chairman . . . Leslie, you intend to make farming your career?

MR. PECK: Yes, I do.

MRS. HEWES: It's not your intent to do anything else or get any other training or take another job at this point?

MR. PECK: That's my career. I've decided to go farming and that's what I'd like to do.

MRS. HEWES: Thank you, Mr. Chairman.

MR. DEPUTY CHAIRMAN: Are there any questions of the

committee? If not, thank you, Mr. Carlyle and Mr. Mackintosh and Leslie.

Did you have a closing statement?

MR. CARLYLE: Yes. Certainly the Hon. Roy Brassard was correct in what he says, that Mr. Mackintosh certainly could have done things a lot simpler if it was simply a matter of transferring property. He could have done it a lot more simply, simply by doing the will that he's done. But he wants to create a relationship beyond simply that, even if we can put it that way, of testate or in beneficiary. He wishes to have a legitimate legal relationship here between himself and this fellow.

I would also just like to thank the hon. Roy Brassard for assisting us in bringing this private Bill before the legislative committee and hopefully before the Legislature, as well as thanking Mr. Clegg for his efforts and his direction in assisting with this.

Thank you very much.

MR. M. CLEGG: Mr. Chairman, I would like to make another comment and perhaps allow Mr. Carlyle to respond, if I may, because of what has been said in one of the questions, in the summation. Because it is a matter which the committee will have in its mind when it's deliberating the Bill, I'd like some comment, if I may, on the tax aspects of the bequest. Because if it's a bequest from a father to a son -- that is, if this adoption is recognized by the minister of revenue -- will it make a difference to the way in which the transfer of the farmland is treated from a tax purpose?

MR. CARLYLE: It could very well do that ultimately, given the way that the Income Tax Act is structured at present, because it would seem to me from my reading of the Income Tax Act that that would qualify as a farm rollover. But it would also seem to me, certainly from the stand of Mr. Mackintosh at present anyway, that there may be certain exemptions that came out of the 1985 federal budget that will assist him. And presumably, in the event that Mr. Peck were to dispose of the property somewhere down the road -- and who's to say whether he will have children at that time; I don't believe he does now -- things being the way they are now, he may also be able to take advantage of those same types of exemptions. It's just a question of what the federal government does in the meantime. There may, in the absence of those other things, certainly be a type of rollover, although I do not, for myself, know how Revenue Canada would treat this adoption in terms of coming in as it has and in the eyes of whether there are any possibilities that way. I can't say.

MR. M. CLEGG: Thank you, Mr. Chairman. I just wanted to have the petitioner position on that on the record.

Thank you.

MR. CARLYLE: I'm sorry. Can I make one last comment?

I certainly do thank the members of the committee for considering this as well. There is a sense of urgency involved here. As Mr. Mackintosh has indicated to you, he doesn't enjoy good health at present, and we're somewhat concerned that if the Bill isn't considered in this sitting of the Legislature, it may be academic next spring, if I can put it that way.

MR. DEPUTY CHAIRMAN: Thank you, Mr. Carlyle and Mr. Mackintosh. You're excused.

Good morning, Mr. Deen and Mr. Gereluk and Mr. Carr.

Gentlemen, we have to go in camera later on, so you have about 40 minutes to make your presentation and answer questions of the committee. I trust that will be sufficient. So would you like to start off . . . Sorry; first of all, we'll have Mr. Clegg give the report.

MR. M. CLEGG: Mr. Chairman, this is my report on Bill Pr. 18, Donald Roy Deen Compensation Act. The purpose of this Bill is to provide compensation coverage in respect of an accident which occurred in 1970 to Donald Roy Deen, notwithstanding that by the strict application of the Workers' Compensation Act, or The Workmen's Compensation Act as it was known at that time, he did not qualify because of the nature of his employer's position in Alberta. The Bill does not have any other provisions apart from that.

I'll just swear in the witnesses, Mr. Chairman.

[Messrs. Gereluk and Deen were sworn in]

MR. M. CLEGG: Mr. Carr, will your presentation be related to legal argument, or will you be making statements as to facts?

MR. CARR: Legal argument primarily.

MR. DEPUTY CHAIRMAN: While our secretary is passing out that information, I should advise the committee that Mr. Gereluk is here as a private citizen representing Mr. Deen, and Mr. Carr is here to represent the Workers' Compensation Board. He will be commenting from a legal point of view. Is that correct?

MR. CARR: Yes, as solicitor.

MR. DEPUTY CHAIRMAN: As solicitor for the board.

Mr. Gereluk, would you like to make a presentation?

MR. GERELUK: Thank you, Mr. Chairman. Hon. members, on Mr. Deen's behalf I want to say that we're deeply grateful for this opportunity to appear. Mr. Deen has had a long, hard fight over the last 18 years in his attempts to secure compensation from the workers' compensation boards both in Alberta and British Columbia, and he feels that this is, for him, a final court of appeal. He's appealing to you, therefore, to consider his case and to support the Bill that's before you.

My name is Winston Gereluk. I'm in fact the occupational health and safety officer for the Alberta Federation of Labour, which is how I got involved in Mr. Deen's case. Though he is not a member of a union or in any way affiliated to the organization I work for, his case nevertheless came to my attention and I took it on and tried to help him. Mr. Deen is attended by Zinnia Koren, who has been his attendant at the Aberhart hospital for the last eight years, and she's one of these unsung heroes who work hard to attend to the patients' needs there. I've gotten to know her quite well over the last while too.

I intend to present Mr. Deen's case in such a way as to acquaint you with his story. I realize that we don't have unlimited time, so I'll try to do that in as efficient a way as possible. Because Mr. Deen is of the opinion that you can only understand what happened to him, why he was denied workers' compensation, if you are aware of his story. In doing so, I have laid out a summary of some of the developments in his case, going back to 1970. I will ask Mr. Deen to say a few words about matters that he knows best about, and then I will try to sum up the case so

that you can understand why it is that we are saying that you should support this Bill.

This is not a case where an injured worker is simply dissatisfied with the treatment that he has received from the board. There are many workers in the province of Alberta. We've all heard the stories in the last while of workers who have approached the board, approached the Legislature, and done various things to draw attention to their case. This, we believe, is an extraordinary case, and that's why it warrants this kind of measure.

I have had passed out a piece of paper, or six pieces of paper stapled together. That's my attempt to summarize Mr. Deen's case, and I've done that, once again, for the sake of efficiency. The first three pages are a kind of summary of developments in his case, and the last three pages are a summary of the submission that we made to you, a summary of the argument as to why his case should be considered as an extraordinary case worthy of your support.

It begins right on the front page of that little handout, with September 1, 1970, with Mr. Deen leaving the employment of Duro Test -- and I'll just run through this very quickly -- which was a lighting sales company that he was employed with since 1967. On September 15, 1970, Mr. Deen began employment as a lighting salesman with a company known as Canadian Securex Ltd., which was a Vancouver-based importing company. He was assigned to northern Alberta, and the contract was established verbally.

He was injured, and his troubles began on October 7, 1970, when he was severely injured in a car accident on Highway 2 south of Edmonton. His spinal cord was severed, amongst other injuries, and he was admitted to the University hospital. Essentially, Mr. Deen has remained in hospital since then, except for the brief sojourn, as he has this morning. He has visited the Norwood auxiliary hospital, the Cross Cancer Institute, and various other places for specific purposes. But other than that, he's been flat on his back. He's a quadriplegic, an invalid, at the Aberhart hospital where he has remained and from where he has attempted to pursue his interest in this case.

Now, I have several letters that I have before myself, and the reason I've brought these letters from Mr. Deen's file -- they are letters that Mr. Deen has supplied me, and they are copies that I've supplied you. I've only supplied two copies. I was not that sure as to procedure, but in any case, I've supplied two copies in case you should want to go over them later in your committee deliberations. I have given them to you not for the purposes of presenting them as evidence particularly, but simply because there are passages in each one of these that helped to explain the case to me and I think would help to explain the case to you.

The first letter I refer to -- letters A and C, by the way, are the same letter; I realized that as I was just copying them yesterday -- is the letter that describes Mr. Deen's condition. In case there's any doubt as to the nature of injury he suffered, the doctor said to Mr. Deen's lawyer at that time in a letter -- Mr. Deen's lawyer at that time was Ed Molstad --

This injury is in my view the most catastrophic one that a human being can suffer and survive. There is no possibility of recovery. He will be permanently 100% disabled. He will constantly be subjected to the risk of break down of the anesthetic skin of his body. He will be subjected to an increased incidence of urinary tract and pulmonary infections. A profound reactive depression is the normal consequence to an injury . . . His life expectancy will be reduced by many years. For the remainder of his life he will be totally dependent on other persons for even the simplest bodily functions.

Yours sincerely,

Bryce K.A. Weir, M.D.

who was the doctor who attended Mr. Deen when he was first injured, at the University of Alberta hospital.

Now, the next incident that I've noticed is January 25, 1971, some three months later, when Deen's lawyer, Mr. Molstad, made the preliminary inquiry to the Alberta Workers' Compensation Board. It was the Workmen's Compensation Board then. He received a letter from the board on April 27 in which he's advised that Canadian Securex, the company he worked for, was not deemed an industry under the Act until the Calgary warehouse for that company was established on February 1, 1971; in other words, about four months after Mr. Deen's accident.

Now, this letter is signed by a solicitor for the board by the name of J.B. Ritchie, and I've made a copy of that letter available too, because that explains, that sets out one of the bases for the bar to Mr. Deen's application to the Workers' Compensation Act and why we are asking now that the Act be extended, that the coverage, the effect of the Act, be extended in such a way as to cover Mr. Deen's case. It said that

It was . . . not an industry to which The Workmen's Compensation Act applied until February 1, 1971 and Mr. Deen did not become a workman in an employment to which the Act applied until that date.

So that was the first indication of the kind of circumstances, the kind of peculiar circumstances, to which Mr. Deen was subjected that prevented him from receiving or from achieving satisfaction in his bid to be covered by Workmen's Compensation.

On October 14, 1971, some eight months later -- I'm doing very quick math in my head -- Mr. Deen was transferred to the Norwood auxiliary, then to station 82 of Aberhart hospital where he has remained since under continuous care. In spring of 1971 Mr. Deen's lawyer initiated civil proceedings against the driver of the vehicle, Ruth Smart; his employer; and the leasing company from which the automobile was received, and that was Fleetwood Leasing.

In September 1971 -- just the next point -- his lawyer inquired into the B.C. workmen's Compensation Board. Having learned from the solicitor for the Alberta board that he's not eligible here, he inquired there. And he was once again told there, in a letter that I've supplied you with, that he was not eligible there because there was no record of claim for Deen, and also his company, Canadian Securex, was not registered with the B.C. board. And you begin to appreciate now some of the problems that Mr. Deen is going to encounter. This is not going to be an easy case.

On March 3 of 1974, some three years later, Mr. Deen received a settlement of over \$42,000: \$30,000 from the unsatisfied judgment fund for the Motor Vehicle Accident Claims Fund, \$10,000 he received for discontinuance of action against the leasing company of the car, and he also received \$2,730 in disability pensions from his insurance company. In October of that year Mr. Deen paid Alberta hospital commission \$14,800 for his rent there, for his hospital costs, and he also made a payment for a family home in Sherwood Park and an automobile for his wife. He will just say a few words about his personal situation later that will help to fill that part out.

He then made contact with the Alberta Ombudsman, and this is a very normal course of affairs: people want to know where to go. Mr. Deen heard of the Ombudsman and made an inquiry to him. His name was Randall Ivany at the time. Mr. Ivany advised Mr. Deen to appeal to the B.C. Ombudsman -- the B.C. Ombudsman had yet to be appointed at that time -- to see what he can do there. In fact, Mr. Ivany was helpful in making it pos-

sible for Mr. Deen to go to B.C. and make application there.

The result of that application was another indication of the kinds of troubles that Mr. Deen went through trying to establish a claim or an appeal or a complaint with the proper authority so that he could begin to pursue the correct course of action so that he could achieve satisfaction in his claim. And the letter of May 8, 1978, which he received from B.C. gives us some indication of the problem that he's going to encounter, because the B.C. Department of Labour compensation consultant asked Mr. Deen for the particulars of his WCB claim there. She wrongly believed that that claim was filed, and I've supplied you the copy of that letter. The assistance from the assistant to the Alberta Ombudsman, Jack Ratcliff, corrected the error and supplied some of the information.

On October 2 of 1978, the Alberta board chairman, who was at that time Roy Jamha, informs Mr. Deen that the board cannot consider accepting a claim under the Act, and in doing so he cites two technicalities. First, that there was no warehouse operation in the province and that as a salesman, as a commercial traveler, Mr. Deen would not be eligible because he would be deemed to work for an industry outside the province. And the second thing he says is that as a salesman he was allowed to handle other lines. The suggestion there, I guess, though it's not on the face of the letter, is that as a salesman allowed to handle other lines, he would be an independent operator, an independent contractor, and therefore not eligible under the rules for workers' compensation.

In both cases we find, or Mr. Deen finds, these questionable, and especially the suggestion that he was allowed to handle other lines and that somehow that disqualifies him. In any case, I made a copy of that letter available. It's sort of typical of the way the doors were closed in Mr. Deen's face. He was told that there was no option, and no reason to even pursue a claim was the effect of the letter. We are not questioning the motives of the people. Many of them, in fact, sincerely tried to help Mr. Deen. But for some reason, doors were shut, and past citing these technicalities, he was not assisted in his quest for compensation. He was not, in any positive way, pointed in the direction that he should take so that he could achieve compensation.

The Alberta Ombudsman then, on October 6 of that year, begins his investigation, and on October 27, 1978, tells Mr. Deen that the review conducted by the Alberta board into his case was exhausted, and he sends Mr. Deen's case to the B.C. board. Once again, he tells Mr. Deen, in effect, that he has no option here. About that time, November of that year, both Grant Notley, who was the NDP leader at that time, and Robert Clark, who was the Leader of the Official Opposition at that time, make representation in Mr. Deen's case, asking that this injustice be corrected and that some form of ex gratia payment be made on Mr. Deen's behalf. On November 29, Mr. Crawford, who was the minister in charge of this area at that time, makes the presentation in the form of a letter that there was not any possible basis for Mr. Deen to qualify, and he regrets it. He expresses his sympathy for Deen, and in that letter, which I have also made available, he refers to a review being conducted right now by the B.C. Compensation Board, which, of course, was not being conducted at that time, or by the Ombudsman. Once again, we get a feel for the kind of technical difficulties that Mr. Deen is going to encounter here.

January 2 of the following year, 1979, a B.C. board consultant responding to the information from the Alberta Ombudsman, who is doing his best at this point to help Mr. Deen over there, says that Mr. Deen may apply under the B.C. Act, but provides

a negative opinion based on the fact that he has been employed out of province. I've supplied a copy of that letter, because the wording there is interesting.

In the August of that year, the B.C. Ombudsman informs Mr. Deen that he has no authority in his office. All this time Mr. Deen has been thinking that his case is being handled by the B.C. Ombudsman. He is informed now that he has no authority, and he has no office until October of that year because his office had just been established. He invites Mr. Deen to appeal then. On October 15 the B.C. Ombudsman does follow through and informs Mr. Deen that he is now investigating, and on October 18 he questions whether or not he can investigate because of an absence of a claim with the B.C. Compensation Board. Mr. Deen forwards an application, then, to the B.C. board on November 22, 1979 -- eight years after he was injured -- in which he explains his delay, and I've supplied a copy of that letter. It's followed, on December 11, with a letter citing the reasons why his claim would probably fail. They cite out of province, and they cite timeliness as the reasons.

MR. DEPUTY CHAIRMAN: Mr. Gereluk, I hate to interrupt, but in view of the time, I think it might be more prudent on your part to present reasons why you feel the Workers' Compensation Board should make some kind of a settlement rather than go through this. I mean, I'm sure the members of the committee could read through this in about a quarter of the time that you're making the presentation, and then you would lose the time.

MR. GERELUK: That's true. Okay. I'm painfully aware of the time too. I mean, being a school teacher for many years, I know what time means. Thank you for your guidance.

MR. DEPUTY CHAIRMAN: I should point out that at 10 o'clock we have to leave this room. We don't have any choice.

MR. GERELUK: The purpose of my presentation's sequence of events -- and I will stop there -- is to show you, to try to provide you with some indication of the developments in Mr. Deen's case so you can appreciate what he's been through, the kinds of mechanisms he's attempted, the kinds of passages he's attempted to negotiate, and just how he appeared to be running into one dead end, one wrong passageway after another, and also to give you some indication of how, basically, the workers' compensation systems in both provinces, in spite of the best intentions of the people in the compensation systems, have treated his case. That's really why we're here before you today asking that you people take the necessary action to ensure that the Workers' Compensation Board applies to his particular case.

I will leave those letters and this summary with you, and before I go into the presentation of the argument, or our submission, I wonder if Mr. Deen could just have a chance to say a few words to you. Rather than asking you questions, Mr. Deen, specifically, and leading you in any way, I wonder whether or not you can just give them some indication of your physical condition -- I think they're quite aware of that at this point -- maybe a few words. Just talk a little bit about what you've gone through in the last 18 years, both yourself personally and in your attempts to achieve some justice through the two boards. Okay? Then I'll ask you a couple of questions about the warehouse question and about the question of your being able to handle other lines. Okay? You've heard that we're short of time, so...

MR. DEEN: Well, you must realize, ladies and gentlemen, that when you have to have complete, total care -- that is, ranging from going to the bathroom, having no muscle control -- someone must do what is called a "manual." That is the first thing every morning: to have your teeth washed, ears washed; to have complete, absolute control, even to have a drink of water; to brush your hair. I watch people over here scratch their head, scratch their neck, straighten their ties. I can't do that. I have no feeling. I don't know whether this is wood; I don't know how hard it is. I can feel a soft, tender face? I can't feel it. I can touch myself. It's my face. Feeling by hand -- [inaudible] my hands [inaudible] my face. From here on up I've got feelings. From here down, it's just like a good piece of meat. With that operation here about a month ago, four growths were removed from my rectum and colon area. Two of them are dead and two of them are alive.

I think that slowly but surely I'm deteriorating to the point where every day is interlocked into the other one. I cannot distinguish sometimes when I wake up in the afternoon; I think it's evening. Or I wake up in the evening, and I think it's morning. The terminology you might use is to be in a vacuum, because there's no place to go, and there's nothing to do. Over a period of time in the hospital it's the same regimental thing: you must be fed at a certain time, bathed at a certain time, sleep at a certain time. Everything is much the same as it was when I was in the army. But I must admit that the medical care I'm given is far better than I've ever seen anyplace, in any of the other provinces. I've got no problems with the medical people at all, nor my assistants, but there is absolutely nothing where I can fit in, having no money whatsoever. One time I used to get \$20 a month. That was a comfort allowance. Then, slowly, I got welfare, and I had a little more.

But what you must realize is the total, absolute loneliness. When I say absolute, I mean this: where you must sit, where people have only time to take you from point A to point B and leave you there to sit on a balcony and look out at the sun. But you are left there. There is nobody to communicate with. There's nothing to do -- just [inaudible]. There's nothing I can do. My family visits. My children come, and that's the only enjoyment I do have. But where I can see people -- they can laugh. I can laugh too. I can laugh at a good joke and everything else, but a lot of the time -- you can . . . I have no money to give -- nothing to buy children Christmas presents, birthday presents. How are you going to buy, just like this, a little present for looking after me? This lady here has wiped my rear end for me every morning when she's on duty. She's washed me, cleaned my dirty bed. She's turned me around and fed me. She's sworn at me, and I've sworn back at her. Our relationship is something that none of you will ever understand.

MR. GERELUK: Don, I'm going to stop you right there. I'm sorry. This story could be told for a long time. I want to ask you three questions, because I think these three questions are important to your case. Why did you never apply for voluntary coverage of the Workers' Compensation Act when you went to work for Canadian Securex?

MR. DEEN: I never ever knew that anybody could apply for compensation. I never had a job where I had to apply for compensation. I was never informed till one of the late ministers here in the House told me, "Well, if you didn't have compensation, why didn't you go and buy it?" Even if I had bought it, it would not have been effective for the simple reason there was

no warehouse here in Alberta. I was not working in British Columbia; they wouldn't accept it. If I bought it in British Columbia, they wouldn't accept it because I wasn't working there, and Alberta wouldn't accept it because there was no warehouse here. So I'm in a catch-22.

MR. GERELUK: Mr. Deen, as well, I wonder if you can comment on the suggestion that you were an independent operator, that you could have carried other lines. What was your relationship to the owner of Canadian Securex, to the company?

MR. DEEN: The original company I worked for was Duro Test Electric. I was a sales representative carrying lamps. I left that position and went to work for Canadian Securex as a sales representative with one line, one line of lamps. Canadian Securex carries -- they're an import/export business. Through them you can buy chairs, tables, office equipment, radios, stereos, anything you want. You can carry that line if you want to. You can carry all lines. But being an expert in lighting, having taken years of it, that is the line of work that I do, and that is what I carried. And in one of the letters from the compensation people, they stated that: you could have carried more than one line, but we know you didn't. I did not carry more than one line, and that is strictly the lamps, which you call light bulbs. I call lamps fluorescent tubes, indirect lighting. In fact, I even had the contract for the city of Edmonton's first traffic lights.

MR. GERELUK: Mr. Deen, just as one last question here: could you just comment on this matter of a warehouse? Now, remember, you are under oath. Just tell them in a few words what your notion of the warehouse was.

MR. DEEN: I went to Vancouver, acquired this job, and came back on the Sunday. The following Thursday the car was delivered to me from Fleetwood motors. I drove down to Calgary at the request of the owner of the company to meet with him and the salesman, who was in Calgary. I went down, and I met the salesman down there. I don't know Calgary very well, but the three of us went someplace, into quite a large building where there was a stock of lamps; all types of lamps were in there. Now, that is a stockpile of lamps. Whether it was termed a warehouse or what it was, he had the key for it; he had the means of getting in. Now, I understand that it was in the old bus terminal building.

The compensation people went down there and said that they had found evidence that there had been some type of an operation down there, but being as it was not there now, they could not say it had been there. That is the kind of mumbo jumbo that I've been picking up.

MR. GERELUK: Thank you, Mr. Deen. You've heard the chairman; we do have a shortage of time. I'm going to try to make a summary of the case, a summary of the argument that we'd make. The summary is in front of you, called summary of submission. It consists of five parts.

The first part says that Mr. Deen should have had a general right to workers' compensation. The purpose of the Workers' Compensation Act is to cover workers who are injured in injuries arising out of and in the course of employment, and Mr. Deen was injured in that way. Furthermore, he was totally disabled. That is precisely the reason that we have a Workers' Compensation Act: to provide benefits to a person in a situation such as this. His condition continues to deteriorate. Neither of

those two have really been taken up as an issue; it's agreed.

The basic intention of the Worker's Compensation Act, furthermore, is to cover everybody. It is interesting that that point was made very strongly when the Act was drafted first in Ontario, then in Alberta. It was made in the Meridith commission there and with the Stirling commission here in Alberta. At the time that the Alberta legislation was passed, some 5,000 railway workers were excluded originally. Every effort was made to bring them back in under coverage of the Act, and they were in the following year, because the intention was that it should be universal, that it should cover all employees except where there is a particularly good reason why an employee should not be covered.

Now, the second part of the argument is that Mr. Deen was a victim of circumstances, where the Acts and regulations in force in Alberta and B.C. combined in such a way that it was impossible, they say, for him to establish a claim in either province. Now, that should not be the case, but it was. We're not faulting anyone in particular except that the effect of it was to leave him out in the cold. He could not be covered in Alberta, they say, because he was employed by an out-of-province industry, Canadian Securex, Vancouver-based. He could not be covered by the B.C. legislation, because he was employed in and his place of residence was in Alberta, as well as some other reasons that they gave, all of which are contained in the letters which I gave you for information. The result is that he could not be covered either way, and he was caught in a catch-22 situation, which we should try to rectify. That's another reason why we ask you to support this particular Bill.

Thirdly, we do have some argument with the technicalities that were raised to discourage him from making application in the province of Alberta. Once again I have to say what Mr. Deen wants me to say, and that is that he doesn't find any individuals at fault; everybody was doing their job. But the effect of them doing their job was that he was excluded from compensation, and he's spent the last 18 years in this poverty-stricken condition on his back in the Aberhart hospital.

The warehouse criteria we do have arguments with, and in any case . . .

MR. DEPUTY CHAIRMAN: Mr. Gereluk, I can only allow you one more minute, because we do have to let the committee members raise questions and, also, we have to hear from the board.

MR. GERELUK: Okay.

The third argument is that the sequence of events was such that he was not able to achieve assistance when he most needed it. I have summarized that under D in my little submission. Then under E, I only make the case that the Workers' Compensation Act contemplates that there will be all sorts of problem cases, and it gives the board and the Lieutenant Governor in Council all sorts of latitude to employ discretion in cases like Mr. Deen's. For whatever reason, that discretion, that latitude was not employed, and we can't even guess what the reasons were. The point is that they were not. But problem cases like this will arise; the Act contemplates it. We're asking you now to support this motion to correct this situation and extend the coverage of the Act to Mr. Deen's case.

We make this appeal once again believing this to be an extraordinary case. I myself am aware of hundreds of cases where workers are unsatisfied with the treatment they've received from the board. I'm aware of other people who handle such cases,

and there is no case such as this. There's no case where circumstances and events have combined in such a way as to squeeze a person out of benefits, and I'm asking you to consider his case for that reason.

Thank you.

MR. DEPUTY CHAIRMAN: Thank you, Mr. Gereluk.

Mr. Carr, would you like to . . .

MR. CARR: Thank you, Mr. Chairman and committee members. I appreciate the opportunity to attend on behalf of the board. I am the general counsel of the board, and the chairman asked me to come and pass on some information to you relative to the legislation.

his is indeed a tragic event insofar as what happened to Mr. Deen. He did have, however, a form of recourse, and this is recourse that existed before workers' compensation passed. That was to take a civil action. He did take that civil action, and as you heard earlier, he was successful in receiving \$42,000.

I think the main thing that the hon. members must understand is that workers' compensation is really an insurance policy. That's what we're dealing with. If you buy insurance, you're covered from the day you take your insurance out. You can't go to a potential insurer after an accident and ask for coverage.

Now, in this particular case, what we're dealing with in terms of what the board has to offer in insurance is compulsory insurance, voluntary insurance, and personal coverage insurance. Compulsory in 1970 were those industries that were named right in the Act. In other words, at that time the legislation included only those industries as named. If you weren't named, you weren't covered. Now, an industry that wasn't named could ask for voluntary coverage, and individuals who wanted coverage could come in and ask for coverage, such as salesmen, and that would be the case of Mr. Deen. That opportunity was always there. It's voluntary, and it's personal. Those were the two kinds of coverage that would fall in another category. That did not occur, so we're dealing only with a compulsory industry.

Now, at that time the employer for Mr. Deen was a company known as Canadian Securex Electric Ltd. They were a Vancouver-based employer that had no physical plant in Alberta. That's terribly important, because if they haven't got an operation here, we don't cover them, and that is true today. In fact, I have with me the regulations for the present Act, and there are two regulations that deal with this very aspect. These are exempted industries: one, a commercial traveler representing an industry located outside the province, exempted; also, salesmen for an industry located outside the province, exempted. These are exempted for a very practical reason: the industry could be located on the continent, in the United States, in another province, and we'd have no means of collecting our assessment contributions for the accident fund. Everybody must understand that it is only the employer that pays into the accident fund, not the General Revenue Fund, not the worker. It's the employer that pays into it. So when you look at that, if Mr. Deen had his accident, if the identical circumstances existed today, he would not be covered, and that's important to understand.

Now, at that time Canadian Securex did not have a warehouse here, had no operation in the province, and therefore was not covered. That's the legal argument of it. It's as simple as that. It's not a technicality. The board doesn't have and

never has had a discretion to accept a claim from a claimant or a worker where the board doesn't have any jurisdiction. The board would be acting without jurisdiction, in fact, if it accepted such a claim.

I would submit to you, hon. members, that if you accepted this Act -- and the Act is quite factual in the way it's worded -- you would be doing something inconsistent with the law as it is today, and you could actually open up doors for other people who are in industries not under the legislation to come forward and say, "Well, what about me?" The farmers of this province, for example, do not have compulsory coverage. They have the opportunity of taking out personal coverage, and a farmer could come in and say, "Well, I didn't know, and I've been injured, and therefore I would like to have a special private Act passed because of my condition."

At that time the legislation was inclusive, and that meant that those that were named were covered. In 1974 we changed the legislation, and we said that it would be universal except for those that are exempted. But as I've already noted, even the same industry which Mr. Deen operated in would still be exempted today from compulsory coverage.

Mr. Ivany, the Ombudsman at the time, as you've heard from Mr. Gereluk, did a thorough investigation and was satisfied, and his letter was as such here:

The circumstances of his employment bar him from being considered as a responsibility of the board, and I cannot support his complaint.

He just didn't have coverage. He had no better opportunity of getting coverage there than you or I if we were going shopping to the Safeway store. You have your remedy, and your remedy will be in a civil action. He pursued that remedy successfully. There's just no room under workers' compensation for him.

Thank you, Mr. Chairman.

MR. DEPUTY CHAIRMAN: Dr. West.

DR. WEST: Yes, one question. In 1970 at what time of the day did the accident happen?

MR. DEEN: Between 9 and 10 o'clock at night on a very slippery highway -- a little bit of ice; black ice as it's called -- traveling at 35 miles an hour.

MRS. HEWES: Mr. Chairman, to Mr. Carr or Mr. Gereluk. Some of this seems to rest with the fact that there was no warehouse in Alberta, but we heard from Mr. Deen that, in fact, he was in a storage place of some kind. I don't see that any place in the material. Perhaps, Mr. Carr, you could tell me what evidence in the board's records there is that anyone went to see it, that there was some indication that it had been used in the past. How was it reviewed and analyzed and assessed as to whether or not there had been a warehouse which no longer existed? Was that tracked down?

MR. CARR: Yes, there was an inquiry in Calgary. They were unable to locate any warehouse. In fact, two auditors from the board went to Vancouver to review the records of Canadian Securex, and they determined that they generally either shipped their goods directly to the client customer or sent goods through a bonded warehouse in Calgary. Of course, the bonded warehouse would be under the Act; the company that owned the bonded warehouse would have been under the Act. Thirdly, they shipped goods through CP and CN express. But they were

unable to find any physical warehouse owned or leased by Canadian Securex, and I can't say more on that.

MR. GERELUK: Could I just add that the time frame here is very important. You have to realize that the time they carried their investigation out was many years after the accident. In fact, years after it was admitted by one of the board's solicitors that there apparently was a warehouse established in Calgary and the only question was one of timing.

MR. DEPUTY CHAIRMAN: Mr. Clegg.

MR. M. CLEGG: The question I want to ask as a supplementary to Mrs. Hewes' has partly been answered by Mr. Gereluk. I was going to ask Mr. Deen whether he was specifically told that the warehouse he went to when he was first employed was a warehouse owned by Canadian Securex or whether he was only told that the supplies in it were owned by Canadian Securex. That appears to be the distinction. It may have been a bonded warehouse that he visited.

MR. DEEN: Where we went to, sir, was through a door and down some steps. All that was in there was the merchandise belonging to Canadian Securex. That was in the old bus depot. The bus depot was there and what you would term would be a warehouse was there when I was there in 1970. When these gentlemen went down to do their investigation, that bus depot, the old one, had been torn down and Calgary now has a new bus depot.

As I said before, if I had told one lie, I would have to tell another one and another. I have never told you a lie, so therefore when I say that it was there, it was there. Being as they could not find it -- they were just two or three years too late.

MR. CARR: Mr. Chairman, if I could supplement that. During the audit of Canadian Securex in Vancouver the records were all made available to the auditors from the board. They were satisfied, from all of the records which were available from and before the date of the accident, that there was no employee hired by Canadian Securex to operate a warehouse in the province of Alberta. In fact, all that they had in Alberta were salesmen, essentially commission salesmen of the nature that Mr. Deen happened to be.

MR. DEPUTY CHAIRMAN: Before I call on Mr. Ewasiuk, committee members can appreciate that we have very limited time left here. We can adjourn into the committee room next door, but I would point out to members that I hope I don't lose any of you, because if I do, we've lost our quorum, and we do have to go in camera to pass three Bills.

MRS. MIROSH: Mr. Chairman, many of us have the next committee.

MR. DEPUTY CHAIRMAN: I appreciate that. I'm just hoping that the quorum here will be held until we get through our business before we go into the next committee.

Mr. Ewasiuk.

MR. EWASIUK: Mr. Chairman, because of the shortage of time, I will only ask a number of questions, although I had several I wanted to ask. Mr. Gereluk, aside from the humanitarian and the compassionate rationale that you advanced this morning

on this case -- Mr. Carr argues the other side -- do you have any other reasons, based on the Act, why Mr. Deen could be covered?

MR. GERELUK: Well, I will answer very quickly by saying that it was the general intention of the workers' compensation Acts set up across Canada that workers' injuries arising in and out of employment should be covered by the terms of the Act. It's not an insurance policy, as Mr. Carr has pointed out; it's a social contract. There are many affirmations of that. The very latest was delivered by Justice Goodridge of the Newfoundland Supreme Court when he outlined in the Piercy case in Newfoundland just recently, in a Charter challenge, what the purpose of the Workers' Compensation Act was. It is to cover workers. It's a social contract, not simply an insurance policy. It is for that reason that we object to rules being interpreted in this particularly tight way. But understanding that they were, for whatever reason, we're appealing to you at this time for relief.

MR. EWASIUK: My next question, Mr. Chairman, is to Mr. Carr. Aside from the board being an insurance company as you suggest, are there not precedents established within the board where they have in fact accepted claims even though the employer wasn't in a contract assessment with the board, where they've accepted a claim and then did apply an assessment at another time, at a future date?

MR. CARR: Oh, yes, that's quite correct. That's only because

the employer has failed in his legal obligation to pay the board. That has happened because the workers are definitely covered. If they're in a compulsory industry, they're covered, notwithstanding the fact that the board has not received its assessment from the employer.

MR. GERELUK: I'd like to supplement that, if I may. Section 22 of the Act -- and it's reflected in the Act that was in force when Mr. Deen was injured -- makes it clear that notwithstanding anything in the Act the Lieutenant Governor in Council has the ability to act to relieve injustice or hardship.

MR. DEPUTY CHAIRMAN: With the approval of the committee, I think we have sufficient material here for our committee's deliberations. I would like to suggest that we terminate this in view of the time, so I can keep my committee together for another three or four minutes. I thank all of you for appearing.

Perhaps the committee could adjourn to the room next door so we can let the other committee start coming in here, and then we can continue with our business. This will be the formal ending of our committee, and we will now move in camera. Could I have a motion to that effect?

MRS. HEWES: So moved.

[The committee moved in camera at 9:56 a.m.]

