(b) to hear and determine any application or other proceeding for relief in the nature of relief contemplated by paragraph (a), including any proceeding brought against the Attorney General of Canada, to obtain relief against a federal board, commission or other tribunal.

This confers a jurisdiction under the various forms of the old prerogative writs and other remedies by which the courts habitually check the excesses, errors of jurisdiction, errors of law and failures to carry out the jurisdiction conferred on them by various boards and tribunals. This gives exclusive jurisdiction to the trial division.

Clause 28 of the bill deals with part of the same subject matter. It is confusing and difficult. Clause 18 transfers a very wide jurisdiction in general terms to the trial division. Clause 28 deals with the jurisdiction of the court of appeal which is the second jurisdiction. I think all hon. members understand that this new federal court will operate in two divisions, the trial division and the court of appeal.

In Clause 18, there is a transfer of the supervisory jurisdiction in rather broad terms of the trial division. Clause 28 provides:

Notwithstanding section 18 or the provisions of any other Act, the Court of Appeal has jurisdiction to hear and determine an application to review and set aside a decision or order, other than a decision or order of an administrative nature not required by law to be made on a judicial or quasi-judicial basis,—

This applies to certain circumstances set out in paragraphs (a), (b) and (c), and is just another way of expressing virtually the same supervisory jurisdiction over commissions and tribunals. The clause confers jurisdiction in slightly limiting language on the court of appeal. I say "slightly limiting" because it may not include all of the matters covered in section 18. However, it certainly covers a great many of them. It raises the difficult legal question of when the order is of an administrative nature rather than on a judicial or quasi-judicial basis. When this is the fact, the review provided by the bill is then to be handled by the court of appeal for the reasons set out. I make no complaint of the reasons. They are fairly extensive and satisfactory. Clause 28(3) reads:

Where the Court of Appeal has jurisdiction under this section to hear and determine an application to review and set aside a decision or order, the Trial Division has no jurisdiction to entertain any proceeding in respect of that decision or order.

In clause 18, complete jurisdiction appears to be given to the trial division. In certain cases, other than a decision of an administration which is not judicial or quasi-judicial, the power of review is given to the court of appeal under more limited circumstances. When the court of appeal is given jurisdiction it is explicitly by subclause (3).

It is my submission, and this has been expressed by Mr. Gordon Henderson of Ottawa who was referred to by the Minister of Justice (Mr. Turner), that this will be confusing in practice. Indeed, it sounds confusing in theory when trying to explain it. Any experienced lawyer will agree that there is no more complex matter than determining whether the functions of a particular tribunal are to be exercised in an administrative or judicial or quasi-judicial manner. Litigants will seek to check this very healthy and important jurisdiction. They will check on the powers exercised by all of the administrative tribunals that enter into a thousand different fields in our system. Litigants will be uncertain whether they should apply to the trial division of the court or whether they should apply to the court of appeal. Those of us who are often in the courts know how frequently people are told: You are in the trial division but you ought to be in the court of appeal, or: You are in the court of appeal but you should have appeared first of all in the trial division before coming to the court of appeal.

• (4:30 p.m.)

The amendment I propose is simple. It is that total jurisdiction in respect of this matter be conferred upon the court of appeal. Not only would this avoid confusion and apply a more straightforward remedy but, I suggest, such a step would be good in itself. Why should not this supervisory jurisdiction, instead of being dealt with by overburdened members of the trial division, be dealt with the appellate division? For one thing, this would minimize the number of appeals arising from these matters; it would cut down the time and the expense which are involved. Second, it would mean that the total supervisory jurisdiction would be exercised by one court, presumably in accordance with one method of approach. The minister keeps telling us how important it is to have harmony and judicial co-operation. He sees this as being necessary, but here he is providing for a system under which jurisdiction is divided.

I could go on to speak at greater length about this subject, Mr. Speaker. As I say, the proposal I made has been approved by highly experienced counsel. It is a simplifying proposal; it is a proposal which would make the act work better; it is a proposal which, above all, and this is of the utmost importance, would give the supervisory jurisdiction which is so essential to the proper administration of justice in a modern state, to the appellate branch of the new court which is to be set up. The minister and his deputy tried to explain to the committee why this proposal was not acceptable. I must say my conclusion was that it could not be accepted because it had not originally been thought of by them. It has now been thought of, and unless the minister can give us some good reasons, reasons which so far have not been apparent, for rejecting it, a proposal which is devoid of any political intent, a proposal which is, I believe, perfectly sound and in accordance with the best advice we have received from the profession, I shall continue to hold that opinion.

If it is not accepted, I believe there will be confusion, unnecessary expense, delay and an unsatisfactory state of affairs in this key sector. No part of the jurisdiction of this federal court would be more important than the duty of supervising the innumerable boards, tribunals, commissions and so on which relate to the rights of Canadians. For these reasons, I urge the House to take this particular amendment seriously. I know that under our system if the minister frowns, his frown is likely to prevail over all the impassioned pleas that I or other hon.