Mr. Douglas (Nanaimo-Cowichan-The Islands): Mr. Speaker, may I ask the minister a question in order to clarify a point? Would a party have the right to appeal a decision of the board which had refused to grant a hearing, if the legislation itself gave the board the discretionary power as to whether or not a hearing should be held?

Mr. Turner (Ottawa-Carleton): That is a good question. It will depend on that individual statute. The remedies in this bill are wide enough to go beyond that type of privity clause. This bill sets out the reviewing power quite clearly. Where the principles of natural justice are not applied, where hearings are not granted, where each party does not have an opportunity to make his case, where the board has exceeded its jurisdiction or gone beyond the scope or ambit of the statute which gave birth to the tribunal or the administrative scope with which it was charged, where the board refused to exercise its jurisdiction, where the board has misinterpreted the law, whether the error in law appears or not on the record of that decision, the decision of the board can be set aside. It will not be open to the board to avoid declaring its reasons. The boards will have to declare their reasons. If they do not, that will not forestall the court from looking behind the reasons to ascertain why the decision has been made.

Mr. Douglas (Nanaimo-Cowichan-The Islands): Is the question only on a matter of law, or is it on a matter of fact?

Mr. Turner (Ottawa-Carleton): The court will not have the opportunity of reviewing the facts unless the facts were determined in accordance with an error in law. I think the hon. member for Greenwood (Mr. Brewin) understands what I mean. If the selection of evidence was based on an error in law, then, of course, the error in law would open the case to review.

• (3:50 p.m.)

Mr. McCleave: Clause 28 speaks of "perverse or capricious manner".

Mr. Turner (Ottawa-Carleton): Indeed, that is in there as well. One of the advantages of this review process will be the mere fact that the process exists. Those who administer and preside over federal commissions and boards in this country will know that their findings are subject to a review of this kind. I should like to recall what Louis Brandeis, one of the great associate judges of the United States Supreme Court, had to say about regulatory agencies. He said that over a period of years an agency begins to reflect the interest of the industry it is supposed to be regulating, and particularly of the establishment in that industry. Thus, the agency charged with regulation of broadcasting tends eventually to reflect the interests of the networks as against those of independent operators. The old Board of Transport Commissioners had the reputation, certainly among the truckers who I represented from time to time, of being a railway board, and so on.

For the independent businessman, for the man trying to succeed in an application which might not be favoured by the establishment, this is a step toward ensuring that he has a fair hearing, that the decision of the commission will be based on a proper interpretation of the law and that the policy embodied in the governing statute, whatever it may be, is fairly interpreted legally. The opportunity now provided for recourse will give such an applicant a better chance when he appears before an agency or tribunal.

Again I underline that the bill will not permit the courts to do the work of these federal boards and commissions. The courts will not substitute their judgment on policy for the judgment of the board. But this will permit the courts to make certain that boards and commissions perform their functions in accordance with the law and as Parliament intended, within their jurisdiction and following the law as laid down.

[*Translation*]

The bill contains several other elements which need mentioning; for instance, the Petition of Right Act is repealed. In the future, proceedings against the Crown will be instituted by simple declaration. In addition, the same prescription period will apply to the Crown as to the subjects who will thus be placed on an equal footing before the Court.

The bill clarifies and codifies the rules of law which will apply in the future to the production of documents in the course of legal action. But, where formerly their production might have been refused in the public interest, the rules of law provided for in the bill will allow the courts to decide on the merits of public interest by non-production, as opposed to public interest by proper administration of justice, subject to certain exceptions, such as national security, instead of having the government or a minister decide whether a document may or may not be produced.