I do not know the answer to this. It certainly was never answered for the committee.

> The time for application is ten days after a person directly affected has given notice of the order or decision of the board.

Now, dealing for a moment with the court's jurisdiction, here is another problem in respect of clause 28 and the right of appeal. If Mr. A and Mr. B are involved in a three car accident with the RCMP, so, the Crown is involved. The courts of Alberta can try the case as between A and B. The trial court in Alberta may say that B is at fault and A is awarded the damages, but it cannot deal with C's problem so the case goes to this new court and the court of appeal which finds that B is not at all at fault but C was. Who decides that conflict? We have one court saying that B is to blame and the other court saying that C is to blame.

Then, there is another problem. There may be a three-party contract; the Crown, A, as one party and B and C as the people. The provincial court may argue that B is in breach and the federal court may say no, it is A or it is C. Who determines that? I do not know the answers. This is what I call legal chaos. The conflict between clause 18 and clause 28 is equally chaotic. Again the letter states:

> Obviously there are occasions in which persons directly affected by an order or decision do not appear before the board. In that event the board will not communicate the decision to them. If the board does not so communicate then that person's right of appeal runs indefinitely. It is unreasonable that a right of appeal should be an indefinite one as it seems unreasonable to require a board to communicate its decision to all persons directly affected by it. We know, for example, that all persons employed in an industry are directly affected by an application for certification made by a trade union. In my view it is not now and should not be in the future the practice of the board to communicate to each employee separately.
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> The objection would to a large extent be removed if the requirement that the communication by the board be removed and if the ten days run from the time when the substance of the order or decision is brought to the attention of the person affected by it.

So, in conclusion, in support of the amendment, I say I think clause 18 should be abolished. First of all, I believe we would be usurping the rights of every Canadian by having that Clause in the bill. It defines the special remedies under special conditions by a special court, and this is far too costly and not acceptable to Canadians. Secondly, if these special remedies are to be handled by a federal court—and it looks to me with the majority the government has that this is what we will have—then I would have to go along with the hon. member for Greenwood who suggests that it would be far better to have them handled by the court of appeal the minister is creating. However, I am not convinced in my mind—and I do not think that anyone who has ever studied the bill and who has done any litigation is convinced—that this will cure the legal chaos.

Mr. David Lewis (York South): I shall not be very long, Mr. Speaker. I sympathize with the Minister of Justice (Mr. Turner) because I feel that in these days, when things are happening in Canada, a technical debate on a legal problem is a little difficult. I wish to appeal to the minister to accept my friend's amendment. I rise because I want to put the argument to him in perhaps a slightly different way, although essentially I will be saying the same things that have already been said. As have the hon. member for Greenwood and I am sure the hon. member for Calgary North, I have had some considerable experience before the courts on applications for special remedies in connection with decisions, particularly, of labour boards. I am very concerned about the difficulties which the presence of both clauses 18 and 28 will create for the ordinary trade union, the ordinary citizen of the country and the lawyer who must guide them as to what steps to take.

The minister no doubt will correct me if I am wrong. However, as I read the two clauses it would seem that the drafters of the bill have attempted to do the following things. First, they have given the trial division exclusive jurisdiction to deal with applications for any of the special remedies such as injunction, certiorari, prohibition, mandamus and so on. Under section 28, they have given the court of appeal what is in effect a right to hear an application, an appeal. I know it is called a review of the order but, in effect, it is a right of appeal to the court of appeal from an order of a tribunal. Secondly, what they have attempted to do, if I understand the two sections correctly, is to leave to the trial division exclusive jurisdiction in respect of the special remedies only in administrative matters, while judicial or quasi-judicial decisions, are left—in effect a right of appeal—to the appeal division of the federal court.

• (5:10 p.m.)

If I understand it correctly, and I will try to indicate why I think it may be correct, I may say that just stating it that way shows what confusion will be created in fact. Why the minister and his advisers should want to create it, God knows. What the bill does is give the trial division exclusive jurisdiction to issue these special remedies. What happens in fact is, if a party, aggrieved by a board, commission or tribunal, feels he ought to go to court, under section 18 he can go to the trial division and ask for an order of certiorari to quash the decision of the board or other tribunal. So far as there may be an argument on that application for certiorari, it will be precisely that the board or commission has "failed to observe a principle of natural justice"—reading from section 28—or has "acted beyond or refused to exercise its jurisdiction". Those are the only grounds. Perhaps the tribunal may have erred in law because there was an error on the face of the record.

It may be that the act under which the board, commission or tribunal under which jurisdiction is established, has a primitive clause trying to oust the jurisdiction of the court. In that case Mr. Justice Roach, as he then was, in a case involving Canadian General Electric was right: if there is a primitive clause in the act, then the court's jurisdiction is ousted with respect to error, unless that error is on the face of the record.

The point I am trying to make is that when you go to court for a writ of certiorari or prohibition particularly,