

*Federal Court Bill*

diction of the appellant tribunal, we find what to me is a confusing provision. The clause reads:

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—

Three alternatives are placed there: the failure to observe a principle of natural justice or a refusal to exercise jurisdiction, errors in law, and perverse or capricious findings of fact without due regard for material before the court. It seems that a much more limited power is conferred on the appellant tribunal under clause 28 than is conferred by clause 18 on the trial division.

I do not know whether the words "notwithstanding section 18 or the provisions of any other act" mean that clause 28 supersedes clause 18. This may be the intention, but I suggest it is not clear and that clause 18 standing by itself seems to give a very wide and extensive power of review. I think these two clauses should be harmonized.

Again, the confusion seems to me to be compounded by clause 28 (3) wherein the court of appeal has jurisdiction to hear and determine an application to review a decision, and the trial division has no jurisdiction to entertain any decision or order. I could understand it in cases where the court of appeal has exercised or assumed jurisdiction, but to say that it has jurisdiction although the trial division has none, when clause 18 appears to give a wide and sweeping jurisdiction, seems to me to be wrong. I think we have to give careful attention to both sides of the coin.

I agree with the principle that decisions of so-called inferior tribunals, tribunals with judicial and quasi-judicial powers, should be subject to review. I believe it important that that review be properly and clearly limited, because I think there are very serious dangers that judicial decisions can cause delay and vast expense.

I remember hearing of a case in the United States which had to do with labour relations, the right to be certified and to represent employees, which took four years to go through the various stages of decision in the courts. By the end of the four years the situation being reviewed had totally changed. The effect of allowing too many appeals and too wide a ground for appeal was to tie up the beneficial purposes of the legislation which, for very good reasons, conferred the powers

[Mr. Brewin.]

on an expert tribunal. That is a side of the case that must be considered. I hope that when the committee studies this bill it will look at all the cases to see whether we may not have gone too far in this matter.

Just the other day in the Supreme Court of Canada there was a decision relating to labour relations with which I imagine the Minister of Justice is familiar, I would not criticize, if I could, their legal grounds for the decision, but I understand its practical effect is to throw Labour Relations Boards all over Canada into a state of utter confusion. I think that was the Metropolitan Life case. This is a danger that has to be observed when dealing with this matter.

I would like to mention one or two other details before I sit down. Clause 21 deals with an exclusive original jurisdiction vested in the trial division to hear and determine appeals under the Canadian Citizenship Act. These are appeals from Canadian citizenship courts. I call the attention of the minister—this may not be entirely in his jurisdiction because other departments are concerned with it—to the fact that in most practical matters of citizenship there is no appeal at present. Under section 10 of the Canadian Citizenship Act the minister is given the discretion at his own will to refuse a citizenship certificate without giving any reason or any hint as to why he has so acted. Many people who belong to cultural organizations which may have left wing tendencies, people among us who are politically minded, or even people who belong to cultural organizations are denied citizenship by a fiat of a political officer, namely the minister, presumably on security grounds.

● (4:30 p.m.)

These are people who have been in this country for many, many years. It is most unsatisfactory to have to go to them and say, "The minister cannot tell us or will not tell us why he is exercising this jurisdiction. We do not know whether justice is being done or not; we cannot tell you."

I believe that the recent Royal Commission on Security suggested that there be a review board. I believe there can be a review board on this very important matter of jurisdiction. I remember that even during the perils of war, when people were interned on security grounds, a procedure was evolved whereby not all the security details and the sources were disclosed to them, but particulars were given of the basic reasons for their intern-