So, in other words, clause 18 is entirely superfluous. What Mr. Campbell is saying is that, by providing for the special remedies as well as for an appeal under certain conditions, the situation has been remedied. As I say, I cannot believe that the top men in the Canadian Bar Association who have done quite a lot of work on this legislation would go along with a minister of justice who would contend there was not a lot of confusion surrounding clauses 18 and 28. In effect, I think that if you leave Section 28—I go further than the hon. member for Greenwood—and wipe out Section 18 you have done away with special remedies. I have not always agreed with that hon. member but I do in this regard. Certain boards have an informality and a lot of lawyers appreciate this because they do not like administrative law boards.

• (4:50 p.m.)

When we are dealing with labour disputes, I can understand this position on the part of unions. They get a decision from the board. I do not think they want the evidence reviewed. Why should the evidence be reviewed through an appeal method when, basically, you have this kind of law? If you take a question of fact before a Court of Appeal you do not get very far. The appeal has to involve at least a question of mixed law and fact. I can understand why a lot of people are going to be upset when they find out what really is taking place. The letter then states:

> Therefore, it would follow that the effect of Section 28(3) is to virtually divest the Trial Division of any jurisdiction in the field of extraordinary remedies. It may be suggested that the remedies of injunction and prohibition are sometimes sought before an order or decision is made and that such relief is not available before the review tribunal established by Section 28.

In other words, there may be times when these special remedies would be requested before the final judgment of the court and before you got to the appeal court. Of course, that occurs in a lot of cases. I have never yet heard anyone define the difference between an administrative or a judicial act. There have been a lot of cases recently which seem to establish that you can only quash where there has actually been some judicial act.

Let me digress for a moment. After a criminal charge has been laid you may, as a result of something that has happened, want to quash that charge by certiorari. The courts have said very clearly the laying of a charge is an administrative act because it really has not yet involved a judicial process. So, the fellow pleads guilty or not guilty. Some courts have said that is still administrative and remains so until somebody gets up and says, for example, my name is John Brown. You then ask that the proceedings be stopped. At this time you really just get into a judicial act. This procedure is very complicated and this bill complicates it even further. That is why I support the suggestion that clauses 18 and 28 cannot stand together since they are somewhat contradictory. The letter then goes on:

> It may be suggested that the remedies of injunction and prohibition are sometimes sought before an order or decision is made and that such relief is not available before the review tribunal established by Section 28. If that is so and if that is the only area of jurisdiction to be left in the Trial Division I would hope that Section 18 might be clarified in that regard.

There has been no attempt made to clarify it. The letter then goes on:

> Section 28(1) vests the Court of Appeal with power to "hear and determine an application to review and set aside a decision or order". That power seems to be enlarged by Section 52(d) which gives the Court the additional power to refer the matter back to the tribunal with appropriate directions. In my view Section 28 should define the complete power of the Court of Appeal in an application to review.
>
> There are many federal tribunals which are not required to give reasons for their decisions. If a tribunal does not give reasons a Court on an application to review may find it impossible to determine whether or not an error of law has been made. It is logical that the distinction between error of law on the face of the record and not on the face of the record be abolished. However, to be an effective ground to review one cannot deal with errors of law not on the face of the record without giving some direction with respect to the content of the record and the proof of proceedings before a tribunal.
>
> In reviewing Section 28 one must bear in mind that there are tribunals which fall within the scope of that section which are not obliged to keep a transcript of evidence or to give reasons for decision.

What happens then? The writer then states:

> I am not suggesting that there need be a statutory requirement that all tribunals must secure the services of a court reporter at all times. I am concerned, however, that Section 28 be effective and workable as against all tribunals falling within its scope.
>
> Section 28(1)(c) includes as its ground for setting aside a decision an erroneous finding of fact that is perverse or capricious. I am concerned that the following words "or without due regard for the material before it" could be construed so as to give a court unreasonably wide powers to review findings of fact made by tribunals. It is desirable that decisions be quashed if they depend on findings of fact which are capricious or perverse. If it is intended that the "due regard" referred to in Section 28(1)(c) is a requirement only that the board look at all the material, that is another way of saying that the board must not behave capriciously or perversely. If the "due regard" gives the court the power to weigh the evidence and consider that a decision should be set aside because in the opinion of the court the balance of the evidence leads to a certain conclusion, the court is then given extraordinarily wide powers of review.

His point is that if that really is the purpose of the act it means that these powers would merely become superfluous. The court could always say that was a wrong finding of fact and order a trial *de novo* to rehear the whole case. The letter then states:

> The whole question of boards taking into account policy matters and matters of which the board has general knowledge creates a problem for a review tribunal. It is obvious that boards must act on certain considerations not established in the evidence.

The minister may not have admitted this at the time of the committee hearings, but it may be that this provision alters the whole trend of administrative law back to a judicial process. In other words, these boards are just rubber stamps and when they have completed their work you can go before the federal appeal board. Let me ask again, how many judges are we going to need to cope with all the administrative tribunal reviews?

An hon. Member: A thousand.