• (4:40 p.m.)

If this bill goes through without the adoption of some of the amendments put down, particularly the amendment I am talking to now, No. 4, and some others, there will be much confusion. If the lawyers, of Canada went along with the Minister of Justice on this, it must have been out of an unusual affection they had for him because of certain things that happen to them from time to time. I do not believe for one moment that he has the majority of lawyers supporting him on this kind of legislation.

Let me come directly to amendment No. 4 which seeks to remove clause 18 from the bill. Amendment No. 7 seeks to strike out subclause (1) of clause 28, which provides:

> Notwithstanding section 18 or the provision 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, made by or in the course of proceedings before a federal board, commission or other tribunal, upon the ground that the board, commission or tribunal
>
> (a) failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
>
> (b) erred in law in making its decision or order, whether or not the error appears on the face of the record; or
>
> (c) based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it

I ask the Minister of Justice seriously to consider the first point so ably made by the hon. member for Greenwood (Mr. Brewin). Take the case where a board failed to observe the principles of natural justice. Normally, there is the right to move by means of special writ or order to quash the decision of the board. I ask, what is the difference between the powers given to the trial division and the powers given to the appeal court?

I should like to put on the record what Mr. Campbell said about this. I think every member of the committee received a copy of his letter, though he did not actually appear before the committee. Mr. Campbell is a member of the firm of Campbell, Godfrey and Lewtas of Toronto, and in his letter he said:

> Section 18 gives the trial division exclusive original jurisdiction to grant extraordinary remedies against federal tribunals.

Pausing there, there are many tribunals. Let me quote the letter dated May 28, 1970 addressed to me as a Member of Parliament, a letter that I know other members received too. May I also refer to a memorandum prepared by the Dalhousie University Faculty of Law. I support the argument of the hon. member for Greenwood because this bill to establish the federal court confuses the law.

Take, for example, the act setting up the Canadian Broadcasting Corporation. Under that act, a person has the right to sue the CBC in the superior court of a province. I know this from experience, though of course not personal experience. Certain procedures for appeals are laid down for many other crown corporations and boards. In other words, there is a double conflict of jurisdiction. Clause 18 provides that special remedies will be used by a judge of the trial division; clause 28 provides for appeals to the new appeal court, which is the same right of appeal given under a writ of certiorari. In the case of some other boards, there is no right of appeal at all. So if you could ever have more legal chaos than that, I would like to know what it is.

The memorandum prepared by the Dalhousie University Faculty of Law has this to say about clause 29:

> Section 29 raises the further question of the federal boards, commissions or other tribunals from which an appeal is not provided, for the true intention of section 29 seems to be that it is only to them that the "setting aside" procedure of section 28 is to apply.

So, even they are confused on that matter.

> Putting the many crown companies to one side—which is not to imply that they do not create substantial problems for the individual-government relationship—here, with no pretensions to completeness, are some federal statutes that establish tribunals of one sort or another from which an appeal is provided:

The following acts establish tribunals from which an appeal is provided: Agricultural Products Board Act; Anti-dumping Act; Atomic Energy Control Act; Combines Investigation Act; Fisheries Research Board Act; Historic Sites and Monuments Act; Industrial Relations and Disputes Investigation Act; Merchant Seamen Compensation Act; National Design Council Act; National Film Act; Parole Act; Public Service Staff Relations Act; War Veterans Allowance Act. Those are the acts that do not provide a procedure for appeal.

I should like to hear the Minister of Justice explain to the House what is going to happen in the cases I have just cited. I could go on to list a group of others that provide a procedure for appeal, but I will not take the time to do so. Indeed, they may be covered under the bill.

Let me return to what Mr. Campbell said. If ever there was legal chaos in a bill, it is in this Bill C-172. Mr. Campbell writes:

> Section 18 gives the Trial Division exclusive original jurisdiction to grant extraordinary remedies against federal tribunals. Section 28 (3) provides that if the Court of Appeal has jurisdiction under section 28 to review a decision, the Trial Division has no jurisdiction to entertain any proceeding in respect of that decision.

Pausing there, it has generally been the rule of law, as I understand it—I think the hon. member for Greenwood will agree with my interpretation—that in cases where a right of appeal is laid down the courts are always reluctant to entertain any application for special remedy, be it by certiorari, prohibition or mandamus. I believe that is good law and I do not think there will be any quarrel with that statement. The court says: "You have chosen your remedy; do not try two or three".

Mr. Campbell continues:

> It seems to me that the language of section 28(1) is broad enough to give the court jurisdiction to review any decision which could be attacked by the common law writ of certiorari.