the present court year of three sessions should be continued; eighth, the judges cannot delegate their essential functions, so the assistance available from law clerks is severly limited; and ninth, the present practice of full oral argument in the Supreme Court of Canada should be continued.

The Council of the Canadian Bar Association considered this report and approved it subject to two reservations, one of which has been incorporated in the legislation, the other relating to the so-called retroactive feature I shall deal with later. The Canadian Bar Association point of view is set out in a letter from the president of September 13, 1973, found as Annex "C" to the report of the Standing Senate Committee on Legal and Constitutional Affairs, to which I previously referred.

The bill before the House is intended to implement in their entirety the recommendations of the special committee of the Canadian Bar Association. The government agrees with those recommendations and feels it is a matter of some urgency that the workload of the court be brought within manageable proportions at an early date.

The legislation will remove the monetary criterion in respect of appeals. In this day and age it is very hard to disagree with the view put forward in the report that a monetary criterion ought not to entitle a litigant to a second appellate review. This has not been the case in the House of Lords since 1934, and it is now almost 50 years since nearly all appeals to the Supreme Court of the United States have been by leave of that court. This is what we are now proposing with respect to the Supreme Court of Canada.

Quite apart from the manifest importance of bringing the workload of the Supreme Court within the control of that court so that appeals may be heard and disposed of within a reasonable period of time, it is almost self-evident that a more equitable and fair test for the privilege of appealing to the Supreme Court of Canada should be developed.

The special committee recommended the test of the public importance of the issue involved as being the one that should be applied. The Council of the Canadian Bar Association thought that it was essential also that the test make reference to an important principle of law. The proposed legislation takes up these recommendations and, we hope, broadens them so that it will be possible for the Supreme Court to consider all meritorious matters that ought to come before it.

● (1530)

In this regard I consider it important for all potential litigants, and those advising them, that the court make clear, to the extent it is possible to do so, how these basic rules will be applied so that there will be as little uncertainty as possible in relation to what matters are ones to which the Supreme Court will give serious consideration on applications for leave to appeal.

The legislation follows the recommendation of the special committee in that by its terms it will apply to every matter in respect of which an appeal has not been begun when the legislation goes into force.

[Mr. Lang.]

The Council of the Canadian Bar Association has suggested that the legislation ought not to apply to cases actually before the courts at the time it goes into effect. We have not adopted that suggestion, for two reasons. The first is that it is imperative to bring the workload of the court within manageable proportions as soon as possible. If any matter in respect of which a writ has been issued in some lower court at the time the legislation comes into force may be appealed, automatically under the old provision it may be several years before this goal can be achieved.

As an aside, you would also get the anomaly with the actual accident of timing. Whether or not a writ had been issued in the matter would determine whether the matter had the right to appeal at a later date. At that later date, with issues of exactly the same nature side by side, one case would have the right to appeal and the other case would not. That anomaly would be avoided.

Second, the legislation does not totally remove the right of appeal. Cases involving $10,000 or more may be appealed to the Supreme Court of Canada henceforth on the same basis as all other cases, namely, that they proceed by way of leave, which will be given where the test of public importance or of the importance of the issue of law or the nature of significance of the matter is such as to warrant attention by the court.

It must also be remembered that all of these cases are afforded one level of appellate review, and that what we are talking about is a second appeal. I believe the failure to apply the provisions of this bill as soon as possible would also lead us into some difficulty, because of the delay in reducing the workload of the Court, in knowing whether we were to be pressed for an extension in the size of the court. The special committee recommended against that extension. I believe there are many members who would see it undesirable for the court to become too large and unwieldy, leading to panels of judges and other problems that arise from that. The sooner we can bring the court's workload under control, the sooner we will be sure that the size of the court is not, in fact, to be increased.

In addition to these main features, which is the principal purpose for putting this legislation before the House, the bill deals with several subsidiary features. It deals with residence requirements of judges of the Supreme Court. It makes a change which is more in line with other legislation going through parliament and applying to the national capital region. It is also designed to bring the ability of the court to provide interest on judgments into closer line with current realities.

This bill is not intended to, nor does it, involve any fundamental alteration in the structure of the Supreme Court of Canada. It is designed to meet one specific and pressing problem in the workload of the court. In dealing with the Supreme Court of Canada, I believe it is important to proceed with caution and in a limited step by step way, learning from experience.

It is hoped, and indeed expected, that this measure will enable the court to control its workload and to hear those cases of importance to Canada and to Canadians. It will obviously have to meet the test of experience and the test of time. I believe it to be an important measure, one which