well. They ask: What would my land have sold for if the government had not come along and taken it from me?

Mr. Justice Ritchie states that this same view was expressed in *Agnew The Minister of Highways*, which is an Ontario case. The same common law rule was applied there, that where there is material under the soil, the owner is entitled to be paid for it. In other words, the value is the true value at the time of taking, plus any future potential value that the land might have.

However, this does not affect the authority of the judgment in the Indian case as to the duty of the arbitrator previously referred to, even where the only possible purchaser of the land's potentiality is the expropriating authority. The Indian case did throw a monkey-wrench into the common law principle because there was a tendency in the Canadian law not to apply the principle of future potential. Let me explain what I mean by that. If, for example, a group of men owned land near a city, their surveyors subdivided that land for a new suburban area, and the land was required for a freeway, the Canadian law did not go as far as the decision in the Indian case. But it finally did say that you were to pay for the true value of the land on its ordinary value plus its future potential, and because you had committed an overt act in planning a townsite you received the true value of the land plus something for the plans you had made because for a number of years you may have had that investment in mind knowing that eventually the city would spread to there. You paid fees for the engineers, but finally the project was lost to you because the government needed the land for another purpose. Proper, flexibles rules would take into consideration compensation for that kind of land potential.

• (8:40 p.m.)

The Indian case goes a little further. Lord Romer said that even if the piece of land was such that the only use it could have was the one the government was going to put it to, you were still entitled to be paid for it. That is the effect of the *Fraser* case. This area had rock, and the rock was needed to build the causeway. Even though they were the only purchasers who needed rock, they were obliged to pay for it. The Supreme Court of Canada upheld the judicial committee's decision in that case.

I am pointing out how flexible is the common law. Under the new formula the *Fraser* case would not have happened. They have abolished the Indian case. They have discriminated against many owners of land. I think there is something wrong when people go out and buy land for speculation, knowing that the government is interested in it. The federal government, working with provincial governments and municipalities, could have cut the price of housing had it stopped that kind of speculation investment, just as Saskatoon did a long time ago.

The situation is different where a person held land for a number of years and had bought it without any knowledge that the city would spread out. A former minister did that in the city of Calgary and it worked out fairly well. Surely such a person is entitled to be paid for that investment? That is what the common law rules accomplish. The statutory rules are almost impossible to understand, each one has to be interpreted separately and no one really knows the true situation. I am sure the minister would not claim to know what each of these subclauses means.

The simple rule is: What would a willing purchaser be prepared to pay the owner of the land at the time of expropriation, plus its future potential? That is the common law rule, and I repeat it: What would a willing purchaser be prepared to pay the owner of the land at the time of expropriation, plus its future potential? By this code the government is trying to plug all these loopholes, and some lawyers think it is opening the door and making things more difficult.

The case law has gone so far as to say that "willing purchaser" could be interpreted to mean the taker. This afternoon I dealt with the Lake Louise case. There is one more comment I would say about it. As a great lawyer in Toronto said to me, it is rather shocking that the government by its regulations can sterilize a development that the owners wanted to undertake and had planned to undertake, and can then come along and do exactly what the owners wanted to do.

In the Lake Louise case the owners planned a townsite. They had surveys done and maps made. Then the government said it was not going to allow them to build a townsite. But what is the government going to do? This is why common law is very important. It has now leased the site to Imperial Oil for multi-million dollar development. It seems to me that under this codified law, to develop the parks in western Canada you must now belong to big business like Imperial Oil, Canadian Power, and Sunshine. The little