barristers and solicitors but as men and women in a specialized field. There will be specialists in fields of law just as in the Department of Justice today there are lawyers who carry out only one phase of legal work. Lawyers will become specialists in tax law, in expropriation cases, in criminal law, in civil litigation or in estates. They will probably take the same general course and will then specialize in the same way doctors specialize. This is coming. It is probably overdue.

The object of any formula for expropriation, whether it is based on the common law rules—*stare decisis*—or on statutory regulation, should take into consideration two simple factors. One is the market value of the land, the value to the taker and not the owner. The second is the value of the present use plus any consequential loss arising from the disturbance of that use.

Having said that, let us see what clause 24(9) will do. First of all, it abolishes many of the common law rules. It would not compensate for any source of material used as part of the property expropriated. For example, if A owned a piece of land which was expropriated for the Trans-Canada Highway and was full of the resource gravel, and B owned land used for the highway in the adjacent area without the resource gravel, both would receive basically the same compensation because by clause 24(9)(a) any anticipated or actual use by the Crown of the land at any time after the expropriation shall not be considered in the valuation. So immediately you start to set up hard rules without flexibility, you get discrimination.

In the example I gave of A and B owning a piece of land taken for the Trans-Canada Highway, both would receive the same value under the hard and rigid formula of the minister even though the land of A contained gravel used on the highway. This is discrimination. I will please one gentleman who is not here at the moment by referring to a case about which he knows quite a bit. Our witness from the Canadian Bar Association said that this formula would be pretty difficult to swallow. When the minister quoted Mr. Weir, I had difficulty following him because he drew inferences from what Mr. Weir said in reference to the Exchequer Court and the civil courts, while the note I have is that Mr. Weir said it would be almost impossible to swallow. If the minister accepts Mr. Weir's evidence on one phase of the argument, I hope he accepts his evidence on the amendment so far as the formula for measuring compensation is concerned.

The common law is a flexible judicial system. All lawyers who have some appreciation of the common law of our country realize that one can do a good deal of research in case law but never find two cases which are identical. In preparing any point of law it is very difficult to say other than that the cases appear to be the same. The beauty of the common law is that it is flexible enough in respect of the decisions one would use. This would give the judges of the Exchequer Court, who the minister has now endorsed with great affection, more flexibility. Each case would stand on its own and we would get away from the discrimination I mentioned in respect of the example of highway property. I that case the specialists on behalf of the state, because they worked for the state for quite a while felt they would be able to control the Bench.

• (8:30 p.m.)

When you read the cases you see that the judges have been pretty flexible and fair to the citizens. I will deal with the *Fraser* case in a few moments. But what will the minister be doing if he takes to heart what has been recommended to him? He will say, "We do not trust these flexible judges any longer. I like the Exchequer Court, but I want to tell them what to do; therefore, I will give them a code and make it so hard and fast that there will be no flexibility". This is the new approach of the Liberal Party.

Mr. Ritchie: It is not very liberal.

Mr. Woolliams: That is right, but sometimes it has compensations. What does the common law actually say? The test has been laid down in many cases which I will mention in passing. I will deal with some of the things said in *Irving Oil v. The King, Diggon-Hibben v. The King,* and *Woods Manufacturing Company v. The King.* In dealing with the concept of the value to the owner as developed before the Supreme Court of Canada, the rules laid down were quite simple. I do not think they need to be codified. Lawyers have been dealing with these cases for a long time. The following is from a case before the Supreme Court:

> What would the claimant, as a prudent man, at the moment of expropriation (he then being deemed as without title but all else remaining the same) pay for the property rather than be ejected from it? Any readiness to pay anything above the value as waste land can only come from the fact that a causeway is to be built.