(The electronic version of the following Journal
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The printed version remains the official version.)

No. 4

Friday, November 29, 1996.

8.30 o'clock a.m.

Prayers.

Petitions

Ms. de Ste. Croix, Member for Dalhousie-Restigouche-East, laid upon the table of the House a petition signed by clients of Red Cross Homemakers from Restigouche County protesting the proposed cuts to wages, benefits and travel allowance to Red Cross Homemakers who serve their communities. (Petition 3)

Mr. Landry, Member for Nepisiguit, laid upon the table of the House a petition signed by clients of Red Cross Homemakers from the Nepisiguit area protesting the proposed cuts to wages, benefits and travel allowance to Red Cross Homemakers who serve their communities. (Petition 4)

Select Committee on Gasoline Pricing

Mr. Byrne from the Select Committee on Gasoline Pricing, presented the Interim Report of the Committee which was read and is as follows:

November 29, 1996

To The Honourable

The Legislative Assembly of

The Province of New Brunswick

Mr. Speaker:

I have the pleasure to present herewith the Interim Report of the Select Committee on Gasoline Pricing.

Your Select Committee on Gasoline Pricing was appointed by resolution of the House adopted April 19, 1996, to examine, inquire into and make recommendations to the House with respect to gasoline pricing in New Brunswick. Accordingly, your Committee held public hearings at which representatives of the general public and industry stakeholders appeared and presented their views. Your Committee also heard from a number of government representatives, both provincial and federal, and conducted extensive research and analysis of the input received.

This interim report provides the highlights of the Committee's analysis to date, the preliminary conclusions of the Committee, as well as a range of options it is considering as it formulates recommendations. Your Committee invites further input and comment from public and industry stakeholders to ensure that it has had the benefit of all relevant information before a final report is tabled in the House.

Your Committee expresses appreciation for the assistance provided by officials in the Department of Natural Resources and Energy and for the assistance of Robin McAdam of KPMG in analysing and formatting data and other information. It also wishes to acknowledge the dedicated service provided by the staff of the Legislative Assembly. Finally, Your Committee expresses its thanks to the many presenters who appeared at the public hearings or submitted written briefs.

I would also like to express my appreciation to the members of the Committee for their contribution to date in carrying out the Committee's mandate.

And your Committee begs leave to submit a further report.

Respectfully submitted,

Greg Byrne, M.L.A.

Chairman.

The full Report of the Committee as presented follows:

INTERIM REPORT OF THE SELECT COMMITTEE

ON GASOLINE PRICING

I Introduction

A. Mandate

On April 19, 1996, the Legislative Assembly passed a resolution "that this House appoint a Select Committee on Gasoline Pricing to examine, inquire into and make recommendations to the House with respect to gasoline pricing in New Brunswick . . .". The full text of the resolution is provided in Appendix A.

The resolution was introduced in response to public concern that gasoline prices in New Brunswick were not reflecting the Province's relatively low rate of motor fuel tax. The resolution reflects the importance to New Brunswickers of access to fairly priced motor fuel.

B. Public Hearings and Data Collection

The Select Committee on Gasoline Pricing has undertaken extensive research and conducted public hearings. All gasoline industry interests were represented at the hearings as well as a variety of government representatives from the Federal level, other provinces and our own Province. A list of presenters at the hearings is provided as Appendix B. Exhibit 1 summarizes the other research undertaken by the Committee.

C. Objectives of Interim Report

This interim report has been issued to stimulate input from all stakeholders on the preliminary conclusions contained herein, and the various recommendations under consideration by the Committee. This report provides the highlights of the Committee's analysis to date, the preliminary conclusions of the Committee, as well as the range of options it is considering as it formulates recommendations. The Committee encourages public and industry stakeholder input to ensure that its deliberations have had the benefit of all relevant information before a final report is issued. Comments may be directed to the Committee through the Office of the Clerk of the Legislative Assembly and should be received prior to January 15, 1997.

D. Acknowledgments

The Committee wishes to acknowledge the efforts of all parties that appeared at the public hearings. The research and analysis that went into the presentations was extensive and greatly appreciated. The staff of the Department of Natural Resources and Energy who have provided research assistance on a highly responsive basis are also to be commended. Finally, the Committee is grateful for the cooperation and assistance of officials in other provinces who shared information and facilitated this undertaking.

Exhibit 1

Summary of Research Undertaken by the Committee

° Price comparisons including and excluding taxes for all major centres across Canada, by major centre within New Brunswick, within Maine at selected border points and for selected States of the U.S. as well as national averages, from 1989 to 1996.

° Federal and provincial fuel tax comparisons across Canada and with Maine from 1989 to 1996.

° Retail margin comparisons for all major centres across Canada from 1989 to 1996.

° Wholesaler/refiner margin comparisons for all major centres across Canada from 1989 to 1996.

° Comparison of prices and margins and the price of crude.

° Structure of the New Brunswick industry including number of outlets by brand.

° Marine and truck transportation costs by location in New Brunswick.

° Impact of volume on cost per litre.

° Review of oil company profitability data.

° Profile of relevant provincial and federal regulations across Canada.

° Profile of regulatory strategies and related studies in selected United States.

II Background on the Oil Business: Canada and New Brunswick

A. Crude Oil Production

Crude oil is the term used to describe oil in its natural state as it is pumped from sea or land based wells. Crude oil is traded in barrel quantities. One barrel equals 159 litres. The majority of Canadian crude oil production or oil industry "upstream" activity occurs in western Canada. The Cohasset - Panuke field off the coast of Nova Scotia produces 20,000 to 25,000 barrels of crude per day, most of which is shipped to markets in the United States. The Hibernia and Terra Nova fields under development off the Coast of Newfoundland are expected to produce 200,000 barrels per day.

Oil producers generally pay royalties to the jurisdiction where wells are located, to compensate for the depletion of a non-renewable resource. In Canada, these royalties are collected by the provinces.

Crude oil varies in composition depending upon its source. The main factors are sulphur content and density. Crude is priced at a particular location with reference to its source which serves as an indicator of type or grade. West Texas Intermediate, North Sea Brent and Saudi Arabia light are similar crudes and are used as the benchmark crudes for pricing other types of light crude oil. An example of a benchmark price would be "West Texas Intermediate at Chicago."

The price of crude oil is determined by world market forces based on supply and demand. Refineries can contract with producers for long term supply arrangements at fixed prices or purchase on the "spot market" and take immediate delivery. Thus at any point in time, refineries in the same market area could be paying different prices for crude as a result of different supply contracts. NR Can surveys indicate that on average across Canada, the cost of crude has represented from 14.0¢ to 16.0¢ of the total cost of a litre of regular unleaded gasoline between 1991 and 1995 or approximately 29% of the retail price of gasoline.

B. Refinery Operations

Crude oil is transported from production fields to refineries by pipeline or marine tanker. Atlantic Canadian refineries purchase the majority of their requirements on the world market. The crude produced in western Canada tends to be "heavy" while the Atlantic refineries are set up to handle light grades.

There are 21 refineries in Canada producing a full range of oil products. The table below presents Statistics Canada data regarding the major product categories, the principal use for each type of product and the portion of demand for crude oil that each category represents:

- motor gasoline - for cars and light trucks 42%

- diesel fuel - for highway trucks or trains 22%

- heavy fuel oil - for large institutional/industrial heating 7%

- aviation fuel - for aircraft 6%

- light fuel oil - for home heating 6%

- other products - such as lubricating oils, greases, asphalt and

petrochemical feedstocks 17%

Refineries can alter their operations to process crude oils of different compositions within bounds, as well as different product mixes. For example, in the winter, refineries produce less motor gasoline and more light fuel oil for home heating.

Canadian refineries vary in capacity from 3,600 to 237,500 barrels per day. Most refineries are owned by integrated oil companies that have their own producing wells. Some, including two of the three refineries serving New Brunswick, are owned by companies that only have "downstream" operations: marketing and distribution networks including retail outlets.

Most of Canada's refiners have reciprocal exchange agreements in place. Under these arrangements, companies such as Shell or Petro-Canada that have no refining capacity in Atlantic Canada may trade product on a litre for litre basis with, for example, Imperial Oil which does have an Atlantic refinery. In exchange for supplying product in Atlantic Canada, Imperial Oil would have access to an equivalent volume of product in some other region where it does not have a refinery.

Refiners sell to retail gasoline dealers and other oil products distributors either directly from storage tanks at their refinery or through distribution terminals. Refined oil products like gasoline are typically transported to distribution terminals by either marine tanker or pipelines. In Atlantic Canada, all terminals are serviced by marine tanker. Highway truck tankers then transport gasoline from the terminal or refinery truck loading facilities (referred to as "racks") to underground storage tanks at each retail outlet. According to NR Can data, the cost of converting crude oil into motor fuel and delivering it to retailers declined from 12.3¢ per litre on average for Canada in 1991 to 7.5¢ per litre in 1995. This cost component has dropped from 22% of the retail price to 14%.

C. Retail Sector

Oil refiners make their product available to consumers through a variety of distributors and retail formats. Retail outlets vary in terms of:

- *ownership* - outlets may be owned by integrated oil companies, refiners, independent business people or chain retailers.

- *operation* - outlets can be operated by their owner, staff directly employed by the owner, or leased to an operator.

- *selling arrangement for gasoline* - some retailers purchase and resell gasoline and as such have input into the retail price. Some outlets, even those which are independently owned, sell gasoline on a commission basis and their supplier owns the gasoline until it is pumped into the consumer's vehicle. Where these arrangements are in place, the retailer is not involved in the price setting process. During a price war, suppliers may switch "buy sell" retailers to a commission system in order that they and not the retailer bear the cost of the price war. Unless the prevalence of commission arrangements is known, it is difficult to determine the extent to which suppliers are involved in the price setting process.

- *use of brand* - the majority of retailers operate under the brand of the integrated oil company or refiner that arranges for them to be supplied. Some independents operate under their own name or the name of the wholesaler that supplies them.

- *ancillary services offered and degree of dependence on gasoline sales* - a majority of outlets now generate substantial revenue from other lines of business such as a convenience store, restaurant, car wash or the traditional service bays.

Retail margins on average across Canada based on NR Can's survey of major centres, have decreased from 3.9¢ per litre to 2.9¢ per litre from 1991 to 1995. On average then, retailers realize 2.9¢ per litre to cover the costs of storing, pumping and marketing gasoline, pay credit card fees and make a profit.

The Canadian average price in 1995 based on the NR Can survey of major centres was 54.1¢ per litre.

D. The Structure of the New Brunswick Motor Fuel Industry

New Brunswick has approximately 683 retail gasoline outlets. The average throughput for New Brunswick outlets is estimated to be 1.36 million litres annually compared to a Canadian average of approximately 2 million litres. Exhibit 3 provides an estimated breakdown of retail outlets by brand and county. Over 60 percent of outlets operate under Irving or Imperial Oil brands. Less than 10% of outlets are classified as independents. Independent outlets are those which are not owned by an oil refiner or oil producer and also do not operate under the brand of an oil refiner or producer. New Brunswick has the second lowest percentage of such independent outlets in Canada.

Two refineries provide the majority of supply for the Province. The Irving refinery in Saint John services only Irving outlets. The majority of the other outlets, regardless of brand are supplied from the Imperial Oil refinery in Dartmouth. The Irving refinery is the largest in Canada with a capacity of 237,500 barrels of crude per day. The Imperial Oil refinery with a capacity of 82,200 barrels of crude per day is similar in size to the Canadian average. These refineries are able to access crude at prices comparable to the rest of Canada. Specific data on this is provided in Part IV.

No outlet in New Brunswick is very far from a wholesale terminal. There are "racks" (distribution terminals) in Saint John (Imperial Oil), Chatham (Ultramar) and Belledune (Shell) which generally serve all major brands other than Irving. The northwest corner of the Province receives some supply from the Ultramar refinery in St. Romuld Quebec. The transportation cost from Dartmouth to most outlets in New Brunswick including the cost of marine transport to the noted distribution terminals, is between 1¢ and

2¢ per litre. Transportation costs for outlets serviced by the Saint John refinery are generally less. Truck transport costs are estimated to be between .4¢ and .5¢ per litre per 100 kilometres.

Price levels in New Brunswick compared to the rest of Canada are examined in Part IV.

New Brunswick has the second lowest level of gasoline taxes in Canada at 24.4¢ per litre. The Canadian average is 28.2¢ per litre. Tax levels across the country as reported by Natural Resources Canada, in cents per litre as of August 1996 were as follows:

- Montreal, Quebec 34.2
- Halifax, Nova Scotia 27.2
- St. John's, Newfoundland 30.2
- Charlottetown, Prince Edward Island 25.7
- Vancouver, British Columbia 28.7
- Winnipeg, Manitoba 25.2
- Regina, Saskatchewan 28.7
- Saint John, New Brunswick 24.4
- Toronto, Ontario 28.4
- Calgary, Alberta 22.7

Exhibit 2 provides definitions of the key types of players in the New Brunswick gasoline business. In this report, the term refiner marketer is used to refer to both the integrated oil companies that have production, refining and marketing operations as well as those that only have refining and marketing operations.

Exhibit 2

Gasoline Industry Players and Definitions

Integrated Oil Companies These are typically large multinational firms that:

- produce crude oil from their own wells;

- refine the crude into a variety of products including gasoline. Gasoline accounts for approximately 38% of the refined output of a barrel of crude.

- operate distribution terminals or "racks" which are typically a set of large bulk tanks referred to as a "tank farm" located on a marine terminal where waterborne tankers can unload.

- market gasoline through both outlets they own and outlets owned by other firms or individuals. The outlets owned by the integrated oil companies generally operate under that company's brand. Independent outlets may operate under one of the major brands or under an independent brand.

The integrated oil companies active in New Brunswick are Imperial Oil, Shell and Petro-Canada. Metro is a brand owned by Imperial Oil.

Refiner Marketers/ Regional Refiners

- These companies differ from the integrated oil companies only in that they do not have oil production operations. These firms purchase crude oil on the world market for their refining operations. The refiner marketers active in New Brunswick are Ultramar and Irving Oil. XL and Turbo are brands owned by Ultramar.

Branded Independents

- These are independently owned gasoline marketers that own one or more outlets and purchase gasoline from a refiner marketer or an integrated oil company. These outlets operate under the brand of the refiner marketer or integrated oil company that supply them. These outlets generally have multi-year agreements with their supplier in which they agree to buy only from that supplier. The supplier often invests in signage, equipment or facility improvements in exchange for the long term purchasing commitment.

Unbranded Independents

- These are independently owned gasoline marketers that own or supply one or more outlets and purchase gasoline from a refiner marketer or an integrated oil company. Neither they nor their customers operate under the brand of a refiner marketer or an integrated oil company. Canadian Tire, Wilson, Greg's and Daly's are examples of unbranded independents.

In this report, the term refiner marketer is used to refer to both refiner marketers and the integrated oil companies. Where the term independent is used, the reference is to unbranded independents.

Exhibit 3 - Breakdown of Retail Outlets in New Brunswick

III Hearing Highlights and Regulatory Context

A. Overview of Oil Company Presentations at Hearings

The oil companies with refining capacity presented the Committee with a consistent perspective at the hearings, which is that there is no need to consider additional regulation of the gasoline industry. The principal reasons offered in support of this view are that:

° Gasoline prices excluding taxes, and refining and marketing margins have been on the decline in New Brunswick and across Canada for the past five years.

° Gasoline, excluding taxes, is approximately 30% less costly today in inflation adjusted terms, than it was in 1980.

° Gasoline retailing practices are changing rapidly. The traditional two bay and pump island outlet is becoming relatively rare while a growing number of outlets have significant other revenue sources such as a convenience store or restaurant. Gasoline is at least as important to these outlets as a traffic builder, as for its direct profit contribution.

° New Brunswick, has a high number of retail outlets per capita and for the available volume. Accordingly, it has an inherently expensive retail network which accounts for higher prices.

° The market share of independents has been growing on a national basis as well as in New Brunswick.

° Jurisdictions with experience in regulation have typically witnessed higher prices for consumers. Nova Scotia was often cited as an example.

B. Independent Dealer Presentations

The presentations made by the independently owned gasoline dealers operating under the brand of an integrated oil company and the views offered by independent chains such as Wilson or Greg's were consistent. Their principal assertions were that:

° There is a concerted campaign by the refiner marketers to decrease the number of independently owned retail outlets in the Province.

° The means being used by refiner marketers to "squeeze" independent dealers include:

- a variety of unexpected new charges or changes in costs for credit, temperature adjusted pricing and communications equipment.

- discriminatory pricing to the degree that dealers have paid wholesale prices higher than the retail price at nearby outlets operating under their supplier's brand.

° Independent dealers are important to consumers as they encourage a price competitive market.

° The independents that operate with low cost structures and that pass these efficiencies on to consumers, offer consumers a choice, good value and serve to promote efficiency on behalf of all retailers.

° It is unfair and contrary to the interests of consumers to allow integrated oil companies to use margins from non-retail activities to subsidize price wars undertaken to drive independents out of business or out of the price setting process.

° If independents are driven out of the market, it is highly unlikely that new entrants will appear and foster price competition. With only a few players, the market will become less competitive and more susceptible to higher prices over the long term.

C. Initiatives in Other Provinces and at the Federal Level

For the past few years, the only province with any regulatory involvement of note in this sector has been Prince Edward Island. It regulates all aspects of gasoline retailing including prices and margins. However, gasoline pricing has become an issue in a number of Canadian provinces and regulatory strategies are being reconsidered.

The Province of Quebec announced a new regulatory scheme on October 17, 1996 which entails both retail and wholesale margin regulation. British Columbia has been conducting an inquiry and released a preliminary report in September, 1996. The report states that the British Columbia market "fails in certain respects to satisfy the conditions of a completely competitive industry" and further that "price discrimination appears to be occurring". The Government of Nova Scotia has initiated talks with the oil companies due to concerns about the potential for discrimination to harm its independent marketers and competition generally.

At the federal level, the Bureau of Competition Policy is currently conducting an investigation into the gasoline industry.

D. Regulation in the United States

A number of states in the United States have implemented fair marketing practices legislation to protect independent gasoline marketers from predatory pricing. There are approximately 21 states that have so called "below cost " selling laws, and six states with partial divorcement legislation. The below cost selling laws prohibit gasoline retailers from selling at a price that doesn't cover their costs of doing business, with allowed exceptions such as to promote the opening of a new station or to meet a competitor's price. The partial divorcement laws prohibit integrated oil companies from operating outlets but do not prohibit them from outlet ownership.

There have been a variety of studies conducted on the impact of these laws. Regrettably, it is difficult to draw firm conclusions from these studies. One industry observer noted the conclusions of many studies tend to be predictable depending upon the study's sponsor.

Of particular note is a 1987 study sponsored by the American Petroleum Institute (API) entitled: The effects of State "Below Cost" Selling Laws on Retail Prices of Motor Gasoline". The API is the industry association for the integrated oil companies in the United States. This study has been cited by oil companies operating in New Brunswick in presentations to the Committee. It presents an analysis indicating that prices in the twelve months immediately following the implementation of below cost selling legislation, in three states with such laws, were higher than in neighbouring states without such laws. The study concludes that such laws are contrary to the consumer interest. The Committee has reviewed this study carefully and identified concerns with the methodology employed. In particular, the brevity of the time period examined raises questions about the validity of the conclusions.

The independent gasoline marketers in the United States have been promoting a piece of draft legislation referred to as HR 2966 which would introduce changes to the federal level Petroleum Practices Marketing Act in that country. This legislation is best characterized as anti-discriminatory in that instead of prohibiting below cost selling, it prohibits a refiner marketer from selling to its regular customers at a price greater than 94% of the price charged at its own retail outlets. The refiner is free to engage in a price war under this proposal, but must protect all of its regular customers when it does so.

IV Analysis of Key Issues

The Committee has identified key issues for analysis in this interim report:

- unexplained price differences

- impact of fuel tax reduction

- impact of independents

- price discrimination

These issues are discussed in turn below.

A. Unexplained Price Differences

The Committee has examined data from Natural Resources Canada regarding price trends which compare Saint John prices to the average of prices in other major centres across the country. A graph showing this comparison from 1989 to 1996 is provided in Exhibit 4. The Exhibit indicates that although the Saint John price was similar to the major city average during 1989 and 1990, beginning in September of 1991 a gap began to appear. The gap between the Saint John price and the major city average increased from 1991 until 1995 as shown in Exhibit 5. The gap has decreased and perhaps disappeared in 1996.

The Committee has been provided with no cost based rationale explaining the extent to which Saint John prices began to move above the major city average in 1991 and remained there until 1996. The differences between Saint John prices and the major city averages have been calculated by Natural Resources Canada and are presented in Exhibit 6. The difference has averaged more than four cents per litre over the 1991 to 1995 period.

Many presenters at the public hearings indicated that differences in prices in New Brunswick were attributable to differences in average volume per outlet in Saint John versus the other major centres. The Committee appreciates the impact of average volume but believe that its impact may have been overstated. The Committee's analysis is that perhaps 1¢ of the more than 4¢ differential can be explained by New Brunswick's lower average volume. This leaves in the range of a 3¢ difference that is unexplained. Many presenters at the public hearings indicated that gasoline prices reflect market forces. Accordingly, the Committee's preliminary conclusion is that the market in New Brunswick was not adequately competitive during the 1991 to 1995 period.

Exhibit 7 provides comparative data for taxes, prices and margins for the major centres in each province for 1989 to 1996.

Exhibit 4 - Saint John Ave. Retail Price vs Canada Ave. Retail Price Excluding All Taxes, 1989 - 1996

Exhibit 5 - Saint John Ave. Retail Price vs Canadian Ave. Excluding All Taxes, July 1991 - December 1995

Exhibit 6 - Saint John vs Canada Refining and Marketing Costs and Margins, 1992 - 1996, Bar Charts

Exhibit 7 - Tax, Retail Price and Margins by Major Market, 1989 - 1996

B. Fuel Tax Reduction

A 2¢ per litre reduction in gasoline tax was effected by New Brunswick in April of 1992. New Brunswick now has the second lowest level of tax in Canada behind only Alberta.

It is the view of the Committee that it is necessary to undertake a national comparison of prices and margins before and after the tax change to determine the degree to which the tax reduction did flow through to consumers. In the 1989 to 1990 period, before the tax reduction, as shown in Exhibit 4, Saint John, New Brunswick had prices excluding taxes comparable to the rest of the Country. As the cost of crude is comparable in New Brunswick to the rest of the Country, it can be concluded that refiner and retailer margins were also comparable to the national average in this period. Exhibit 6 shows that during the first six months of 1992, the period when the tax decrease came into effect, refiner and retailer margins combined were 3.7¢ higher in Saint John than the national average for major centres. During the first six months of 1995, refiner and retailer margins combined in Saint John were 5.4¢ per litre higher than the national average for major centres.

In consideration of the increase in the spread between New Brunswick margins and the national average, it is the conclusion of the Committee, that over time, the tax reduction has been captured in large measure by the oil marketers and that consumers have not received the full benefit. The lower rate of gasoline tax in New Brunswick has not produced correspondingly lower gas prices for New Brunswick consumers. The lower tax may well have provided the opportunity for higher oil marketer margins. Consumers see only tax included prices as they make inter provincial price comparisons.

C. Impact of Independents

The Committee has obtained information from a variety of sources indicating that the competitive structure of the market affects prices. First, the Committee heard from presenters at the public hearings that prices are a result of market forces. The Committee interprets this to mean that where there is increased competition, prices are likely to be lower and where there is less competition, prices will be relatively high. A review of price and industry structure data appear to support this conclusion.

An analysis was undertaken, comparing the average price by province for the major centres surveyed by Natural Resources Canada (NR Can), to the percentage of independent outlets in the respective provinces. This scatter plot is provided in Exhibit 8. Exhibit 9 shows a plot of average price against average throughput for each province. While these analyses are not sophisticated, they suggest that both the percentage of independents and average throughput have an impact on prices. The preliminary conclusion of the Committee is that the presence of independents does have a downward impact on prices.

In reaching this conclusion, the Committee also considered the apparent impact of independents in Nova Scotia and the county to county discrepancies in prices within New Brunswick.

Exhibit 10 shows the trend in prices in Halifax since 1989. Prices have decreased coincident with the entry of new independent marketers since the industry was deregulated.

Exhibit 8 - Retail Price Excluding Taxes vs Percentage of Outlets Controlled by Independent Marketers, Canada

Exhibit 9 - Retail Price Excluding Taxes Vs. Annual Volume of Sales per Outlet

Exhibit 10 - Saint John Ave. Retail Price vs Ave. Retail Price Excluding All Taxes for Atlantic Canadian Cities, 1989 - 1996

Exhibits 3 and 11 show the structure of the New Brunswick industry as well as average price data. In general, the counties with the most independents have the lowest prices and the counties which have the highest degree of domination by a single firm have the highest prices.

New Brunswick is a province with a very low percentage of independents overall. It is a preliminary conclusion of the Committee that this has played a role in the unexplained price differences noted above.

D. Price Discrimination

New Brunswick must be concerned about the level of competition in its market. Two companies control over 60% of the retail outlets and perhaps a higher portion of the total volume at retail. There are few independents compared to most other provinces. The wholesale market is even more concentrated. There were unexplained price differences between Saint John and other major centres across the country from 1991 to 1995.

In this context, the public hearings provided a number of examples where specified retailers were charged more for gasoline than the retail price at outlets displaying the brand of their supplier. It is clear that price discrimination has occurred such that different outlets in the same market area are paying substantially different wholesale prices from the same supplier.

The type of price discrimination that has occurred, could force both branded and unbranded independents out of the market or at least out of the price setting process. Accordingly, it is the view of the Committee, that such practices do present a threat to the overall degree of competition in the Province. Predatory pricing is a matter that falls under the jurisdiction of the Federal government. However, it appears that under the *Competition Act* the burden of proof required to prove predatory pricing makes it unlikely that independent gasoline retailers are provided with effective protection.

Exhibit 11- Structure of the New Brunswick Retail Gasoline Business

E. Summary of Preliminary Conclusions

In consideration of the above, the preliminary conclusions of the Committee are that:

- Cost differences do not fully explain the higher prices paid by New Brunswick gasoline consumers relative to consumers in other provinces for much of the past six years. Cost differences also do not fully explain county to county price differences within New Brunswick.

- The New Brunswick market has not been adequately competitive for much of the past six years.

- New Brunswick consumers have not received full benefit of the 1992 provincial tax reduction.

- The lower rate of tax in New Brunswick has made it easier for oil marketers to realize higher margins in New Brunswick.

- There is a risk that the few independents that do exist could be forced out of the market by discriminatory pricing activity on behalf of refiner marketers.

- An environment that encourages the presence of independents and competition at both the wholesale and retail level would be desirable for consumers.

V Options

The Committee's objective is to identify the type of environment that will enable the market to work to the benefit of consumers over the long run. With this intent, the Committee has reviewed a range of options including:

° price regulation

° divorcement and partial divorcement

° below cost selling laws

° strategies for encouraging wholesale competition

° fair marketing practices type laws

° increased industry monitoring and reporting.

The experience of Nova Scotia and Prince Edward Island with price regulation does not appear to have been to the advantage of consumers. Accordingly, price regulation is not an option under consideration by the Committee.

The Committee is focusing on four options as it formulates recommendations:

° A required minimum retail margin of between 0¢ and 3¢ per litre which could be implemented by regulation under existing legislation. The objective of this would be to limit the damage that can be inflicted on an independent by any refiner marketer, during a price war.

° A fair marketing practices act modelled on "HR 2966" which was proposed at the federal level in the United States.

° A customized fair marketing practices act of the type advanced by the independent sector.

° Increased monitoring and reporting of industry structure, prices and margins.

Each of these options are described below. The Committee is open to input on other strategies for encouraging a competitive marketplace that will keep prices and margins in New Brunswick at reasonable levels in the future.

A. Minimum Margin Under Existing Legislation

Clause 6 of the existing legislation (The Gasoline, Diesel Oil and Home Heating Oil Act) indicates "no wholesaler shall sell gasoline to a retailer at a price that would prevent the retailer from obtaining the minimum retailer margin fixed by the Minister in accordance with regulations" An option designed to limit discriminatory pricing by refiner marketers would be to establish a minimum margin at a level of between 0¢ and perhaps 3.0¢ per litre.

For this approach to achieve the desired effect, careful consideration must be given to the supporting regulations. The legislation implies that retailers have the right to sell gasoline at whatever price is necessary to retain their usual sales volume. When retailers sell at that "volume retaining" price, they are entitled to purchase gasoline at a cost that allows them to earn at least the legislated minimum margin. The supporting regulations would then require a process for establishing the "volume retaining" price as well as specify the other information necessary for a retailer to prove that they were prevented from obtaining the regulated minimum retail margin.

B. Anti-discriminatory Pricing Legislation Similar to HR 2966

The Society of Independent Gasoline Marketers of America (SIGMA) advocates a piece of draft legislation prepared by their legal counsel called HR 2966. A copy of HR 2966 is provided as Appendix C. The draft legislation was introduced at the federal level but was not passed into law. It is designed to be an improvement over the various below cost selling laws which exist because it does not prohibit price wars and because it defines a prima facie case in a manner that avoids extensive debate about the meaning of "below cost".

- the prima facie case is established if a refiner sells gas to a reseller at "a price which is higher than 94% of its consumer retail price per gallon".

The Committee is concerned about the minimum retail margins that are implicitly established by the selection of the 94% threshold. A possible option would be to consider legislation similar to HR 2966, but modifying Section 403 (d) (1) (A) (Page 12 line 23) and replacing the 94% with "100 percent of its consumer retail price per litre less the cost of transportation to the customer's retail location". Paragraph (d) (1) (B) would have to be similarly adjusted.

C. Proposals from the Independent Sector

The following have been proposed by the independent sector:

1. Posting of Rack Prices - Refiners and Wholesalers must post their branded wholesale prices in a public accessible format.

2. Unbranded no more than branded - It shall be unlawful for a refiner to enter into an arrangement with a branded dealer whereby the unbranded wholesale price is greater than the branded wholesale price of the refiner.

3. Refiners cannot set retail price - It shall be unlawful for a refiner to dictate the retail prices of motor fuel, except that this section shall not apply to a refiner's retail sales at its direct operated outlets.

4. Rack price must be lower than - The price at a refiner's direct operated outlet, less retail less cost to retail that refiner's transportation and retail operating expenses shall be at no time less than the price the refiner charges to any reseller.

5. Ex-Freight prices must be offered - Refiners/wholesalers must post wholesale prices excluding freight. (Freight included prices could also be offered.)

6. Dealers able to select terminal - It shall be unlawful for a refiner to restrict the supply point(s) where a dealer is able to obtain their supplies of motor fuel from that refiner.

7. Outlet opening promotions exempt - A refiner-marketer is not bound by the terms of number 4 (above) for the first two weeks a station is in business.

8. Civil remedies - In the event that any provision is broken by any member of the industry, the onus rests with private interests to launch a civil action for injunctive relief or damages.

The Committee is concerned about the minimum retail margins that are implicitly established by number 4. If this approach were considered, it may be necessary to examine alternative wording for number 4. One possibility would be as follows:

"the price at a refiner's direct operated outlet, less the cost of transportation to the outlet shall be at no time less than the price the refiner charges to any reseller."

There are then, effectively, two variations of each of the three options presented above, under consideration by the Committee. Each of options A, B and C could be implemented in a form that provides for a minimum retail margin targeted at the level of an efficient operator. Alternatively they could each be implemented in a way that only prohibits a refiner marketer from charging branded or unbranded independent resellers more than that refiner/marketer's price to the public through outlets carrying its brand.

D. Increased Industry Reporting and Monitoring

This option would include increased industry structure and price monitoring and the publication of price comparisons to improve consumer awareness of pricing practices. Companies would be required to file specified information such as number of outlets by ownership and operating arrangement. Such a regime could also require reporting of instances where retail prices at outlets owned by refiner marketers fall below wholesale prices to other customers.

VI Conclusion

This interim report has been issued to stimulate input from all stakeholders on the preliminary conclusions contained herein, and the various recommendations under consideration by the Committee. The Committee is committed to identifying the means to ensure that the New Brunswick market place operates fairly and competitively to the benefit of consumers, and exhibits prices and margins that are reasonable in the context of costs and reasonable in comparison to other jurisdictions.

All of which is respectfully submitted.

(Sgd.) Greg Byrne, M.L.A.

Chairman.

Mr. Byrne informed the House of a breach of privilege in the apparent leak and publishing of a draft version of the report of the Select Committee on Gasoline Pricing before it was presented in the House.

Mr. Speaker acknowledged the seriousness of the matter as raised, however, he noted that the Member had not given the required notice to raise a question of privilege.

Ordered that the Report be received and that leave be granted, and the Committee continued.

Hon. Mr. Valcourt rose on a Point of Order, questioning the propriety of more than one Minister responding to a question.

Mr. Speaker stated that although the Opposition may be indulgent to having two Ministers respond to a certain question, it would be highly irregular to the precedents of this House for three separate Ministers to respond to one particular question.

Hon. Mr. Valcourt rose to clarify remarks he made yesterday concerning average weekly wage earnings in New Brunswick.

With leave of the House, Hon. Mr. Valcourt laid upon the table of the House two documents: "Employment, Earnings and Hours" August 1996 Statistics Canada; and an excerpt from the Daily Statistics Canada of November 28, 1996.

Bills Introduced

The following Bills were introduced and read the first time:

By Hon. Mr. King,

Bill 13, *An Act to Amend the Marriage Act*.

Bill 14, *An Act to Amend the Change of Name Act.*

Bill 15, *An Act to Amend the Family Services Act.*

Bill 16, *An Act to Amend An Act to Amend the Family Services Act.*

Ordered that the said Bills be read a second time at the next sitting.

Notices of Motions

Mr. Flynn gave Notice of Motion 58 that on Tuesday, December 5, 1996, he would move the following resolution, seconded by Mr. McAdam:

WHEREAS the prime bank lending rate is the lowest it has been in decades, currently at 4.75%;

AND WHEREAS financial institutions in some cases are charging borrowers using credit cards in excess of 17%, and some department and other stores are charging rates in excess of 28%, resulting in the greatest spread between credit card rates and the bank rates ever seen in Canada;

BE IT RESOLVED THAT the Legislative Assembly of New Brunswick express its support for the efforts of the more than one hundred Members of Parliament who are working to achieve a reduction in rates for those using consumer credit cards.

Second Reading

Mr. Speaker having put the question that Bill 2, *An Act to Repeal the Regional Savings and Loans Societies Act*, be now read a second time, and a recorded vote having been requested, the motion for second reading was carried on the following recorded division:

YEAS - 24

Hon. Mr. Frenette	Hon. Mr. Doucet	Mr. Olmstead
Hon. Mr. Graham	Mr. Allaby	Mr. MacDonald
Hon. Mr. Blaney	Mr. Wilson	Mr. Byrne
Hon. B. Thériault	Mr. LeBlanc	Mr. MacLeod
Hon. Mr. Lockyer	Mr. Jamieson	Mr. Doyle
Hon. Mrs. Trenholme	Mr. A. Landry	Mr. Landry
Mrs. Jarrett	Mr. Johnson	Mr. Armstrong
Mr. McAdam	Ms. de Ste. Croix	Mrs. Kingston

NAYS - 7

Mr. Sherwood	Mr. Mockler	Mr. Volpé
Mr. Robichaud	Ms. Weir	Mr. D. Graham
Hon. Mr. Valcourt		

Accordingly, Bill 2, *An Act to Repeal the Regional Savings and Loans Societies Act*, was read a second time and ordered referred to the Committee of the Whole House.

Mr. Speaker having put the question that Bill 3, *An Act to Repeal the Regional Savings and Loans Societies Federation Act*, be now read a second time, and a recorded vote having been requested, the motion for second reading was carried on the following recorded division:

YEAS - 32

Hon. Mr. Duffie	Mr. McAdam	Mr. Kavanaugh
Hon. Mr. Frenette	Hon. Mr. MacIntyre	Mr. Olmstead
Hon. Mr. Graham	Hon. Mr. Doucet	Mr. DeGrâce
Hon. Mr. King	Hon. Mrs. Day	Mr. MacDonald

Hon. Mr. Blaney	Mr. Allaby	Mr. Byrne
Mr. McKay	Mr. A. Landry	Mr. MacLeod
Hon. B. Thériault	Mr. Steeves	Mr. Doyle
Hon. Mrs. Breau	Mr. Jamieson	Mr. D. Landry
Hon. Mr. Lockyer	Mr. A. Landry	Mr. Armstrong
Hon. Mrs. Trenholme	Mr. Johnson	Mrs. Kingston
Mrs. Jarrett	Ms. de Ste. Croix	

NAYS - 5

Mr. Sherwood	Mr. Mockler	Mr. D. Graham
Mr. Robichaud	Mr. Volpé	

Accordingly, Bill 3, *An Act to Repeal the Regional Savings and Loans Societies Federation Act*, was read a second time and ordered referred to the Committee of the Whole House.

The Order being read for second reading of Bill 4, *An Act to Amend the Consumer Bureau Act*, a debate arose thereon.

And the debate being ended, and the question being put that Bill 4 be now read a second time, it was resolved in the affirmative.

Accordingly, Bill 4, *An Act to Amend the Consumer Bureau Act,* was read a second time and ordered referred to the Committee of the Whole House.

The Order being read for second reading of Bill 5, *An Act to Amend the Commissioners for Taking Affidavits Act*, a debate arose.

And the debate being ended, and the question being put that Bill 5 be now read a second time, it was resolved in the affirmative.

Accordingly, Bill 5, *An Act to Amend the Commissioners for Taking Affidavits Act*, was read a second time and ordered referred to the Committee of the Whole.

It was agreed by unanimous consent that second reading of Bills 6 through 10 be deferred until Tuesday next.

The Order being read for second reading of Bill 11, *An Act to Amend the Trade Schools Act*, a debate arose thereon.

And the debate being ended, and the question being put that Bill 11 be now read a second time, it was resolved in the affirmative.

Accordingly, Bill 11, *An Act to Amend the Trade Schools Act*, was read a second time and ordered referred to the Committee of the Whole.

The Order being read for second reading of Bill 12, *An Act to Amend the Plumbing Installation and Inspection Act*, a debate arose thereon.

And the debate being ended, and the question being put that Bill 12 be now read a second time, it was resolved in the affirmative.

Accordingly, Bill 12, *An Act to Amend the Plumbing Installation and Inspection Act*, was read a second time and ordered referred to the Committee of the Whole.

Address

The Assembly resumed the adjourned debate on the proposed motion of Mr. Flynn, Member for York, seconded by Mr. A. Landry, Member for Nepisiguit:

THAT the following Address be presented to her Honour the Lieutenant-Governor to offer the humble thanks of this House to Her Honour for the gracious speech which she has been pleased to make to the Legislative Assembly, namely:

Fredericton, N.B.

November 26, 1996.

To Her Honour,

The Honourable Margaret Norrie McCain,

Lieutenant-Governor of the Province of New Brunswick.

May It Please Your Honour:

We, Her Majesty's most dutiful and loyal subjects of the Legislative Assembly of the Province of New Brunswick, now in session, beg leave to extend our humble thanks to Your Honour for the gracious speech which Your Honour has addressed to us, and we assure Your Honour that all matters which may be submitted to us during the session will receive our most careful attention and consideration.

And after some time,

Hon. Mr. Frenette asked for the unanimous consent for the House to sit beyond 12.30 o'clock p.m. for the purpose of completing the speeches, which was granted.

And the debate continuing, after some further time, it was on motion of Mr. Sherwood, adjourned over.

And then, 12,48 o'clock p.m., the House adjourned.

The following documents, having been deposited with the Clerk of the House, was deemed laid before the Table of the House, pursuant to Standing Rule 39:

1995-96 Annual Report of the Premier's Council on the Status of Disabled Persons - November 26, 1996

1995-96 Annual Report of the Solicitor General - November 27, 1996

1995-96 Annual Report of the Department of Economic Development and Tourism - November 28, 1996