No. 5

Friday, November 28, 1997.

8.30 o'clock a.m.

Prayers.

Petitions

Mr. Olmstead laid upon the table of the House a petition on behalf of residents of Hospital Region III urging the government to establish a kidney dialysis unit at the Dr. Everett Chalmers Hospital. (Petition 1)

Select Committee on Gasoline Pricing

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

March 26, 1997

To the Honourable
The Legislative Assembly of
The Province of New Brunswick

Mr. Speaker:

I have the pleasure to present herewith the Final 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.

An Interim Report was prepared by the Committee and tabled in the Legislature on November 29, 1996. This Final Report, and the recommendations contained herein, effectively concludes the work of the Committee.

Respectfully submitted on behalf of the Committee.

(Sgd.:) Greg Bryne
Chair.

The full report of the Committee as presented follows:

Final Report of the Select Committee on Gasoline Pricing

I Introduction

A. Mandate

On April 19, 1996, the Legislative Assembly passed a resolution "That Whereas there is a general dissatisfaction with the level of gasoline pricing in New Brunswick compared with neighbouring jurisdictions; Be it therefore resolved 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. So to, were a variety of representatives from the Federal government, 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. Interim Report

An Interim Report was issued by the Committee and tabled in the Legislature November 29, 1996. The Interim Report provided the preliminary analysis and conclusions of the Committee as well as a range of options then under consideration by the Committee. The Interim Report was issued to stimulate input from all industry stakeholders. Feedback on the Interim Report was provided by the organizations listed in Appendix C.

D. Final Report

This Final Report embodies all of the statistical data presented in the Interim Report as well as an Appendix D which contains additional data and analyses undertaken by the Committee. This final Report provides the Committee's recommendations.

E. Acknowledgements

The Committee wishes to acknowledge the efforts of all parties that appeared at the public hearings and provided feedback to the Interim Report. 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 major centres by province 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.
- Comparison of provincial average prices where available.
- 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.
- Refiner marketing costs and 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 U.S. 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 in which 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 on its source. The main variables 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.

B. Refinery Operations

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%

Atlantic refineries are typically set-up to handle light grades of crude. 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.

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 and are thus serviced by marine tankers. This is easier logistically than transporting oil from western Canada.

Refiners sell to retail gasoline dealers and other oil product 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.

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, by 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 traditional service bays.

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 2 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. Exhibit 3 compares the relative share of outlets operated on an independent basis across the 10 provinces. The data in Exhibit 3 is from Octane magazine and should be used only to show trends.

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.

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.

Exhibit 4 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 - outlets by Brand By County (See Original)

Exhibit 3 percentage of outlets by province (See Original)

Exhibit 4

Gasoline Industry Players and Definitions

Integrated Oil Companies These are typically large multi-national firms that:

- produce crude oil from their own wells;

- refine the crude into a variety of products including gasoline.

- 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 both through 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/ These companies differ from the integrated oil companies

Regional Refiners 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 supplies 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. Co-op, 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.

III Review of Price Components 1989 to 1996

This chapter presents comparative data on retail prices, retail margins, taxes, refining and marketing costs and margins and crude costs from 1989 to 1996.

The principal source of gasoline industry price and margin data is Natural Resources Canada (NRCan). Since 1986, NRCan has compiled price and margin data for the largest city in each Canadian province on a monthly basis, relying on data supplied by each province. Every oil company presenting to the Committee used NRCan statistics to support their arguments. It is important, nonetheless, to recognize that the data is only from the major centres and does not represent provincial averages or allow calculation of national averages. Appropriate caution must thus be used in making inferences from the data regarding province-wide conditions.

A. Retail Prices Excluding Taxes

1. Saint John

NRCan data comparing prices in Saint John to the average of prices in the largest centre in each province is provided in Exhibits 5 and 6. With the exception of a period of distortion around the time of the Gulf war, the price in Saint John excluding taxes (ex-tax price) has fluctuated between 28 and 35 cents per litre since 1989. The exhibits indicate 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. As shown in Exhibit 6, the gap between the Saint John price and the major city average increased from 1991 until 1995 and averaged at least 4 cents per litre. The gap decreased and perhaps disappeared in 1996, a period when there were severe and prolonged price wars in selected markets in the Province. Appendix D provides various other price analyses on both tax included and tax excluded bases comparing the Saint John average price and the New Brunswick average retail price to various other cities and jurisdictions.

2. New Brunswick Average

Comparisons of provincial average prices between New Brunswick and other provinces are difficult because of a lack of data. The Department of Natural Resources and Energy undertakes price surveys for New Brunswick and Nova Scotia. Only Ontario, Manitoba and British Columbia were also able to provide provincial average data.

Exhibit 7 provides provincial average data for Nova Scotia, Ontario, Manitoba and British Columbia for 1994, 1995 and 1996 to the end of August. The exhibit indicates both differences between major centre and provincial average prices as well as differences between provinces.

Ex-tax prices on a provincial average basis for New Brunswick were substantially higher in 1994, 1995 and 1996 than Nova Scotia and Ontario, but comparable to Manitoba. In 1994, the New Brunswick average was 2.4 cents per litre higher than the Nova Scotia average and 4.1 cents higher than the Ontario average. In 1995, the New Brunswick average was 6.4 cents per litre higher than the Nova Scotia average and 4.8 cents higher than the Ontario average.

Referring again to Exhibit 7, the differences between the major centre averages and provincial averages provide an indication of the ability of the major centre averages to reflect provincial average conditions. In Ontario, Nova Scotia, Manitoba and British Columbia there was a spread of approximately 2 cents per litre between the provincial average and the major centre average. This contrasts with New Brunswick where the Saint John price has tracked the provincial average price closely as shown in Exhibit 8. Thus although the Saint John price provides a reasonable proxy for the New Brunswick provincial average, the major centre price appears less representative of average prices in other provinces.

B. Cost of Crude

Exhibit 9 compares the Saint John ex-tax retail price to the cost of crude oil. According to the NRCan data, the cost of crude has ranged between 11 and 19 cents per litre from 1989 to mid-1996, excluding the time around the Gulf war. Over the period, the cost of crude has typically been less than 30% of the total retail price of motor fuel including taxes.

C. Retail Margins

A comparison of the retail margin in Saint John compared to the average retail margin for other major Canadian cities is provided in Exhibit 10.

Exhibit 11 provides a comparison between retail margins in Saint John, St. John's , Halifax and Charlottetown. Both graphs indicate that the retail margin in Saint John has been relatively constant at a level averaging a little over four cents per litre, except during the first half of 1996 when it dropped below four cents. The other major centres collectively exhibit a declining trend over most of this period to an average margin closer to three cents per litre during 1994 and 1995, increasing somewhat in 1996 but remaining below the Saint John level. Saint John retail margins have been similar to or below those of St. John's and Charlottetown since 1991. Relative to Halifax, from 1991 to early 1993 Saint John retail margins were lower. Since March of 1993, Halifax retail margins have been lower than Saint John on a reasonably consistent basis. Retail margins for other Canadian cities compared to Saint John are provided in Appendix D.

D. Taxes

Provincial tax levels for 1989 to 1996 by province are presented in Exhibit 12. The New Brunswick tax rate is 10.7 cents per litre relative to 13.5 cents per litre in Nova Scotia and a Canadian average of 14.9 cents. In addition to the provincial tax, there are federal taxes which averaged 13.7 cents per litre for the 10 major centres across the country in 1996. Appendix D provides tax comparisons by province and versus Maine from 1989 to 1996.

E. Refining and Marketing Costs and Margins

NRCan calculates a value referred to as "refining and marketing costs and margins" by subtracting the published cost of crude, taxes and retail margins (from surveys) from the retail prices reported in its monthly 10 city survey. Exhibit 13 provides a comparison of this value for Saint John versus the other major Canadian centres. Exhibit 14 compares Saint John to Halifax, Montreal and Toronto. Refining and marketing costs and margins are higher in Saint John than both the major centre average and the other cities isolated in Exhibit 14, on a consistent basis from 1992 to 1995. In 1996, the gap between Saint John and other centres diminished.

F. Overview of all Price Components

The differences in all price components between Saint John and the other major cities are quantified in Exhibit 15 using data for the first six months of each year from 1991 to 1996. The difference between Saint John retail margins plus refining and marketing costs and margins averaged more than four cents per litre from 1991 to 1995. Exhibit 16 provides average data for retail prices, taxes and margins for the ten cities surveyed by NRCan as well as a volume weighted average for the 10 cities.

G. Price Diversity within New Brunswick

Exhibit 17 provides annual average tax included prices by county within New Brunswick from 1992 to 1996 and the percentage of independents by county. The exhibit illustrates the degree of variation in prices from county to county and how relative prices fluctuate over time. As an example, in 1992, the average Moncton price was 5.3 cents per litre higher than the Fredericton price. In 1996, the Moncton price was 1.8 cents per litre lower than the Fredericton price. The spread between the market with the lowest yearly average prices and the one with the highest yearly average prices has been 8.9 cents, 5.5 cents 3.3 cents, 3.5 cents and 5.8 cents per litre respectively for 1992 to August of 1996 respectively.

(Note: Graphs 5 through 17 are available in the printed copy of the Report.)

Exhibit 5 - Saint John Ave. Retail Price vs Canada Ave. Retail Price Excluding All Taxes, 1989-1996

Exhibit 6 - Saint John Ave. Retail Price vs Canadian Ave. Excluding All Taxes, July 1991 - December 1995

Exhibit 7 - Price Difference Between major Urban Centre and the Provincial Average

Exhibit 8 - NB Ave. Retail Price vs Saint John Ave. Retail Price Including All Taxes ($Cdn)

Exhibit 9 - Saint John Ave. Retail Price Excluding Taxes vs. Delivered Crude Costs, 1989-1996

Exhibit 10 - Saint John, NB Ave. Retail Margin vs Canada Ave. Retail Margin, 1989-1996

Exhibit 11 - Saint John, NB Ave. Retail Margin vs Ave. Retail Margins in Other Atlantic Cities, 1989-1996

Exhibit 12 - Provincial Motor Fuel Taxes

Exhibit 13 - Saint John Refining & Marketing Costs & Margins vs Canada Ave., 1989-1996

Exhibit 14 - Saint John Refining & Marketing Costs & Margins vs Other Major Centres, 1989-1996

Exhibit 15 - Saint John versus 10 City Average - Breakdown of Price Components, 1992-1996

Exhibit 16 - Tax, Retail Price and Margins by Major Market, 1989-1996

Exhibit 17 - Structure of the New Brunswick Retail Gasoline Business

IV Regulation in Other Jurisdictions

A. Initiatives in Other Provinces and at the Federal Level

For the past few years, the only province with any regulatory involvement of note in the retail gasoline sector has been Prince Edward Island. That province 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 price discrimination to harm its independent marketers and competition generally.

The Federal Government plays an indirect role in the regulation of the industry through the *Competition Act*. The Bureau of Competition Policy which has responsibility for implementing the Act has just concluded an investigation into the gasoline industry. In a presentation to the Committee during the public hearings, Industry Canada indicated "The purpose of the Act is to promote the efficiency and adaptability of the Canadian economy ensure small and medium sized business have an equitable opportunity to participate in the Canadian economy and to provide consumers with competitive prices and product choices."

Since 1935, the Act has had provisions respecting price discrimination and predatory pricing. The hearing transcripts indicate: " price discrimination is being party to a sale that discriminates against competitors of a purchaser of an article by granting a discount or other advantage to that purchaser which is not available to competitors at the time of sale. Predatory pricing is a situation in which a dominant firm charges low prices over a long enough time period so as to drive a competitor from the market or deter others from entering the market. Having done that, it then raises prices to recoup losses behaviour must have the effect of substantially lessening competition or eliminating a competitor."

The burden of proof under the *Competition Act* is that predatory pricing and price discrimination must be proven beyond a reasonable doubt. In large part, because this burden of proof is so difficult to satisfy, Industry Canada indicated "there are very few cases extant in this area there are one or two in both instances which have gone through the courts a provision that is not very often used."

The conclusion of the Committee is that the Competition Act has little effect in preventing discriminatory pricing or predatory pricing.

An overview of the regulatory climate across the country is provided in Appendix D.

B. 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 does not 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.

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 legislative proposal is best characterised 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.

Appendix D provides additional information regarding legislation in selected US States.

V Hearing Highlights and Interim Report Feedback

This chapter provides an overview of the facts and opinions presented at the public hearings and in the feedback received in response to the Interim Report.

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.

° The New Brunswick market exhibits the characteristics of a competitive market: competing wholesale suppliers, a variety of retail suppliers and brands, price volatility and price diversity.

° Care must be taken in drawing conclusions from the NRCan data which only includes information from the largest city in each province.

B. Independent Dealer Presentations

The presentations made by the independently owned gasoline dealers operating under the brand of a refiner marketer 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.

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

° 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.

° There must be a reason why over twenty U.S. States have enacted legislation to protect independent gasoline dealers from predatory pricing.

° Municipal zoning restrictions have made it difficult to secure property for retail gasoline outlets and inhibited competition.

VI Analysis and Conclusions Regarding Key Issues

The Committee has focused on four key issues in undertaking its review of the industry:

- differences in prices and margins

- the impact of the fuel tax reduction

- the size and impact of the independent sector

- the risk of price discrimination reducing competition

These issues are discussed in turn below.

A. Differences in Prices and Margins

1. Saint John versus other major cities

From 1991 through 1995, Saint John prices excluding taxes averaged at least 4 cents per litre more than the average for the largest cities in each province across the Country. Some of this difference is due to slightly higher retail margins in Saint John as shown in Exhibit 10. Most of it is due to higher refining and marketing costs and margins as shown in Exhibit 13. This price differential is particularly notable considering that in 1989 and 1990, Saint John prices were essentially comparable to the average for the other major centres.

The oil companies argue that the noted differences relative to other markets are less important than the fact that both ex-tax prices and refining and marketing costs and margins have decreased in Saint John since 1991. The Committee however is of the view that comparisons to other markets are pertinent. Further, the data indicate that ex-tax prices and refining and marketing costs and margins have not decreased to the same extent in Saint John as the average for other major centres.

The principal factor forwarded by the oil companies to explain the 4 cent difference is the lower average station throughput for Saint John versus larger centres. While the average throughput for Saint John stations is not known, Exhibit 18 provides an indication of the impact of average throughput on costs. The analysis suggests that the impact of throughput is in the range of one to two cents per litre. Offsetting this are three factors:

the lower cost of doing business in Saint John due to factors such as real estate values.

the fact that until 1993, the price comparison presented uses a full service price for Saint John but a self service price for other cities. Thus, in 1994 and 1995 when all prices were self serve, a smaller gap between Saint John and other centres, not larger would be expected.

transportation costs which favour Saint John because of the presence of both the Irving refinery and an Imperial Oil marine terminal.

Balancing all of these factors, the Committee concludes that a substantial portion of the four cent per litre differential is not explainable by cost factors. Market factors, specifically a lack of competition in the market from 1991 to 1995 are believed to account for the difference. The decreases in prices realized in 1996 reflect the impact of greater competition

Exhibit 18 (See Original)

Impact of Volume on Retailing Costs

2. New Brunswick versus other regions

The provincial average price data in Exhibit 7 which allows comparisons between New Brunswick and other provinces showed New Brunswick prices to be well in excess of Nova Scotia and Ontario but comparable to Manitoba. Each of these markets requires separate review.

Nova Scotia has been a highly competitive market since 1993 when new retailers began to enter the market subsequent to deregulation. These market dynamics produced price levels not generally considered sustainable in the long run, considering the cost of crude and reasonable refining and marketing costs. Nonetheless, Nova Scotia is usually the most comparable market for New Brunswick, with similar average throughput, similar transportation costs and being supplied by the same refineries.

Ontario data must be viewed in the context of the very high average throughput per outlet characteristic of that market. Average throughput per outlet in Ontario is more than double that of New Brunswick. As Exhibit 18, indicates, this provides that market with perhaps a 2 cent per litre cost advantage. The throughput difference does not, however, explain all of the price gap between New Brunswick and Ontario.

Manitoba has slightly higher throughput per outlet than New Brunswick. New Brunswick, however, should have a transportation cost advantage due to the proximity of most areas in the province to the supplying refineries and marine terminals. Manitoba has no refinery and no marine terminals. Product must be trucked across the province from the pipeline located at the southern edge of the province. Use of Manitoba as a benchmark should also recognize that its Government has had periodic concerns about gasoline pricing.

Balancing the available data, the Committee concludes that for the 1991 to 1995 period, average prices in New Brunswick reflect an overall lack of competition. Nonetheless, the available data suggest that the problem has not been as great on a provincial average basis as in Saint John.

3. Within New Brunswick

The considerable variability in county to county average prices in the province as shown in Exhibit 17 are not a reflection of cost differences from region to region but market forces. The entry of more independents into the market as well as Ultramar's "Value Plus" campaign has made gas prices in some areas highly competitive and highly volatile as outlets attempt to build market share. In other areas, where there is less competition, prices have tended to be higher.

The breakdown of outlets by county provided as Exhibit 2 shows that the degree of competition varies substantially by county. Some counties have all the majors and a variety of independents. Other countries are dominated by one or two of the majors. With this range of competitive conditions, substantial variability in prices is to be expected and has been the result.

B. The Impact of the 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.

The Committee has undertaken a variety of analyses to assess whether the tax reduction was passed on to consumers. The Committee concludes that the impact was different depending whether the first year after the tax reduction is considered or whether a longer term perspective of two to three years after is taken. Reference to Exhibit 13 shows that no increase in refining and marketing costs and margins occurred in the year after the tax decrease. The exhibit actually indicates that in the twelve months from April 1992 to April 1993, refining and marketing costs and margins in Saint John decreased, suggesting that initially the tax decrease was passed on.

A longer term assessment of the period of two to four years after the tax decrease, leads to a different conclusion. The analysis in the preceding section indicates that although gas prices have fallen in New Brunswick, they have not fallen as much as in other jurisdictions. The lower rate of gasoline tax in New Brunswick has not then produced correspondingly lower gas prices relative to other jurisdictions. The combined impact of the tax decrease and the lack of competition in New Brunswick was that the industry in New Brunswick was under less pressure than the industry across the rest of the country to rationalize and improve efficiency. It was only when new competition and price competition became active in early 1996 that the gap between Saint John prices and other centres decreased to more reasonable levels. The Committee is of the opinion that from 1993 to 1995 New Brunswick consumers did not receive the full benefit of the tax decrease.

C. The Size and Impact of the Independent Sector

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 appears 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 as reported by Octane magazine. This scatter plot is provided in Exhibit 19. Exhibit 20 shows a plot of average price for the major centres 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 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 21 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. Exhibits 2 and 17 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. The Committee concludes that this has played a role in the degree of competition in the market and the price differences between New Brunswick and other jurisdictions noted above.

Exhibit 19 Retail Price Excluding Taxes vs Percentage of Outlets Controlled by Independent Marketers, Canada (See Original)

Exhibit 20 Retail Price Excluding Taxes Vs. Annual Volume of Sales per Outlet (See Original)

Exhibit 21 Saint John Ave. Retail Price vs Ave. Retail Price Excluding All Taxes for Atlantic Canadian Cities, 1989-1996 (See Original)

D. The Risk of Price Discrimination Reducing Competition

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.

E. Summary of Conclusions

In consideration of the above, the 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 although in 1996 it was highly competitive in some regions.

- New Brunswick consumers initially received full benefit of the 1992 provincial tax reduction. It is not clear that the benefit has been fully realized for the past few years.

- 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.

VII Recommendations

The Committee's objective is to identify the type of environment that will enable the Province's gasoline market to work to the benefit of consumers. The Committee has developed its recommendations mindful of the complexity of the gasoline business and that some gasoline regulatory strategies, particularly those involving the control of prices or margins, may work against the consumer interest.

1. The oil industry is undergoing a rationalization process nation-wide. The Maritime region has lost one of three refineries and hundreds of retail outlets since 1990. The Committee shares the concern voiced by some presenters that a continuation of the type of price war activity witnessed in 1996, could reduce the number of players at the retail level to a point where competition will not be sufficiently vigorous to protect the consumer interest. New Brunswick already has a relatively low proportion of independents. In this context, the Committee believes it is important for the government to track the structure of the industry within New Brunswick, including market shares, wholesale and retail prices and the number of competitors in each market area. The Committee recommends that the Government undertake a thorough review of its motor fuel industry and gas tax policy monitoring systems. The current monitoring program which principally entails monthly price surveys in each major market must be expanded. With appropriate, timely and accurate data, the government can be more proactive in protecting the consumer interest and resolving problems with the industry.

The Committee recommends that government continue with the existing price survey program and implement:

A retail level reporting system providing by outlet perhaps quarterly, information such as volume, number of pump nozzles, brand, and ownership arrangement.

A wholesale level reporting system for information such as volumes and prices.

A regular public reporting process comparing prices in New Brunswick to other suitable benchmarks such as the cost of crude, the New York Harbour price of gasoline, or prices in other jurisdictions.

2. The Committee considers the maintenance of competition at all levels of the industry to be the key to protecting consumers. The maintenance of fair competition and efficient markets is a Federal Government responsibility. Since 1935, the Federal *Competition Act* has had specific provisions making price discrimination and predatory pricing for the purpose of substantially lessening competition or eliminating a competitor, offences under the Act. It is clear, however, that few prosecutions have proceeded under the Act. Representatives of the Competition Bureau reported that there are "one or two cases in both instances that have gone through the courts". One reason for the limited effectiveness of the Act appears to be the strict burden of proof required to establish that an offence has occurred. It is very difficult to establish *beyond a reasonable doubt* that price discrimination or predatory pricing occurred and substantially lessened competition.

The Committee recommends that the government urge the Federal Government to undertake a fundamental review and assessment of the *Competition Act* to determine whether its criminal law model (i.e. providing for fine, and/or imprisonment with the accompanying burden of proof, *beyond a reasonable doubt*) effectively serves the public policy goal of preventing discriminatory or predatory pricing to substantially lessen competition. The alternative model of a legislative framework to consider would be based on providing civil remedies to consumers and victims of discriminatory or predatory pricing. We believe that such a system could afford more protection to consumers.

3. It may take time to achieve the amendments to the Federal *Competition Act* referenced in Recommendation 2. In the interim, there are means within the jurisdiction of the Government to address the risks that predatory pricing or price discrimination could lessen competition to the detriment of consumers. To this end, the Committee recommends that the Government implement provisions that would limit the opportunity for predatory pricing, limit the damage that could be inflicted by discriminatory pricing practices, and restrain the ability of refiner marketers to create arbitrary price zones. Specific provisions the Committee believes might achieve these ends are:

prohibiting wholesalers or refiner marketers from charging wholesale prices higher than the retail price at their customer stations in the same area; and,

requiring public posting of wholesale price schedules, excluding transportation costs for branded and unbranded customers, and according to purchase volumes and terms at all wholesale racks in the Province.

4. Quebec is in the process of implementing a regulatory regime involving the establishment of minimum margins, aimed at protecting its independent retail sector. The Committee has reviewed numerous reports and analysis on the impacts of regulated prices and below cost selling laws which effectively regulate a minimum retail margin. It is very difficult to establish a regulated margin that will not create some market inefficiency or subsidy for less efficient operators. The Committee concludes that regulating prices or minimum margins creates a risk of causing higher prices to the detriment of consumers. The Committee recommends that the Government closely monitor the mechanics and effectiveness of the Quebec program.

Ordered that the Report be received.

During Oral Questions, Mr. Speaker reminded members to keep questions and supplementary questions short and to the point.

Bills Introduced

The following Bill was introduced and read the first time:

By Hon. Mr. Lee,

Bill 7, *An Act to Amend the New Brunswick Highway Corporation Act*.

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

The following Private Bill was introduced and read the first time:

By Mr. D. Landry,

Bill 8, *An Act to Incorporate the Cosmetology Association of New Brunswick*.

Ordered referred to the Standing Committee on Private Bills.

The following Bill was introduced and read the first time:

By Hon. Mr. MacIntyre,

Bill 9, *An Act to Amend the Labour Market Research Act*.

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

The following Private Bill was introduced and read the first time:

By Mr. McAdam,

Bill 10, *An Act to Amend the City of Saint John Pension Act*.

Ordered referred to the Standing Committee on Private Bills.

Government Motion

Hon. Mr. Blanchard gave Notice of Motion 21 that on Thursday, December 4, 1997, he would move the following resolution, seconded by Hon. Mr. Frenette:

THAT this House approves in general the budgetary policy of the government.

Notices of Motions

Mr. Robichaud gave Notice of Motion 22 that on Tuesday, December 16, 1997, he would move the following resolution, seconded by Mr. Mockler:

That an address be presented to Her Honour the Lieutenant Governor, praying that she cause to be laid upon the table of the house a list and description of all costs for each department showing the costs associated with the use of computers. This should include the costs of purchase, leasing, licenses, maintenance, servicing, and repair of computers, software, networks, and Internet connections; and the costs of all training for department personnel in the use, maintenance, servicing, and repair of computers and associated equipment; and the costs of all contracts with private contractors to provide computers and associated equipment, and to provide maintenance, servicing, repair, and training for computers and associated equipment for each of the last five fiscal years.

Mr. Volpé gave Notice of Motion 23 that on Thursday, December 11, 1997, he would move the following resolution, seconded by Mr. Robichaud:

That an address be presented to her Honour the Lieutenant-Governor, praying that she cause to be laid upon the table of the House all financial documents pertaining to the hosting of the Atlantic Vision Conference including statements of all costs and expenses paid by any government department, agency, or employees.

Mr. Sherwood gave Notice of Motion 24 that on Thursday, December 11, 1997, he would move the following resolution, seconded by Mr. Volpé:

That an address be presented to her Honour the Lieutenant-Governor, praying that she cause to be laid upon the table of the House a copy of the findings of the Interdepartmental Marine Committee in the document entitled Information Report on Current Marine Initiatives and Issues.

Ms. Weir gave Notice of Motion 25 that on Tuesday, December 9, 1997, she would move the following resolution, seconded by Mr. Doucet:

That an address be presented to Her Honour the Lieutenant-Governor, praying that she cause to be laid upon the table of the House by the Minister of Health and Community Services, a copy of the consultant's report to the Region II Hospital Corporation Board prepared by Sandra Matheson Food Management Consultants.

Ms. Weir gave Notice of Motion 26 that on Tuesday, December 9, 1997, she would move the following resolution, seconded by Mr. Doucet:

That an address be presented to Her Honour the Lieutenant-Governor, praying that she cause to be laid upon the table of the House by the Minister of Economic Development and Tourism, a copy of the consultants' study for the signature golf strategy, and copies of all correspondence, reports, memos, or any other document in the possession of the Minister relating to the golf strategy.

Government Motions re Business of House

Hon. Mr. Tyler announced the government's intention to proceed with Second Reading of Bills in the following order: Bills 2, 4, 5, 6, and 3.

Second Reading

The Order being read for second reading of Bill 2, *Fredericton - Moncton Highway Financing Act*, a debate arose thereon.

Hon. Mr. Blanchard rose on a Point of Order, his point of order being that the Member for Saint John Harbour remain on point in her debate. Several members spoke on the Point of Order.

Hon. Mr. Tyler having requested that the House deal with all the related Bills at once, Mr. Speaker sought the unanimous consent of the members, and unanimous consent was denied.

Mr. Allaby rose on a Point of Order, his point of order being that members should speak to the principle of the Bill.

Hon. Mr. Blanchard raised a similar Point of Order.

During debate, Mr. Robichaud apologized for a remark made earlier in the sitting.

And the debate continuing, Ms. Weir rose on a Point of Order, her point of order being that the second reading stage of a Bill is the most important stage, citing *Beauchesne's Parliamentary Rules and Forms, 6th Edition*:

> **§659.** The second reading is the most important stage through which the bill is required to pass; for its whole principle is then at issue and is affirmed or denied by a vote of the House. It is not regular on this occasion, however, to discuss in detail the clauses of the bill.

Several members spoke on the aforesaid point of order.

Mr. Speaker ruled that the House would deal with comments relating to the principle of the Bill currently before the House.

Mr. Robichaud rose on a Point of Order, his point of order relating to the rules of debate on second reading and quoted *Beauchesne's 6th Edition*:

> **§640.** (2) Second Reading The stage of second reading is primarily concerned with the principle of a measure. At this stage, debate is not strictly limited to the contents of a bill as other methods of attaining its proposed objective may be considered. This stage is coupled with an Order to commit the bill.

Mr. Speaker stated that there are limits to the topic under debate, and that he had been liberal in interpreting the rules. Mr. Speaker ruled that the House would continue to deal with the principle of Bill 2.

And the debate being ended, and the question being put that Bill 2 be now read a second time, it was resolved in the affirmative on the following recorded division:

YEAS - 33

Hon. Mr. Lockyer	Mrs. Jarrett	Mr. Johnson
Hon. Mr. Blanchard	Mr. McAdam	Ms. de Ste. Croix
Hon. Mr. Tyler	Hon. Mr. LeBlanc	Mr. Olmstead
Hon. Mr. Graham	Hon. Mr. Byrne	Mr. Flynn
Hon. Mr. Lee	Hon. Mrs. Kingston	Mr. DeGrâce
Hon. Mr. King	Mr. Allaby	Mr. O'Donnell
Hon. Mrs. Barry	Mr. Wilson	Mr. MacDonald
Hon. Mrs. Breault	Mr. Smith	Mr. Devereux
Hon. Mr. MacIntyre	Mr. Kavanaugh	Mr. MacLeod
Hon. Mrs. Mersereau	Mr. Steeves	Mr. D. Landry
Hon. Mr. Jamieson	Mr. A. Landry	Mr. Armstrong

NAYS - 6

Mr. Volpé	Mr. Robichaud	Ms. Weir
Mr. Sherwood	Mr. Mockler	Mr. Graham

Accordingly, Bill 2, *Fredericton - Moncton Highway Financing Act*, was read a second time and ordered referred to the Committee of the Whole House.

Mr. Speaker having put the question that Bill 4, *An Act to Amend the Companies 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 - 31

Hon. Mr. Lockyer	Hon. Mr. LeBlanc	Ms. de Ste. Croix
Hon. Mr. Tyler	Hon. Mr. Byrne	Mr. Olmstead
Hon. Mr. Graham	Hon. Mrs. Kingston	Mr. Flynn
Hon. Mr. Lee	Mr. Allaby	Mr. DeGrâce
Hon. Mrs. Barry	Mr. Wilson	Mr. O'Donnell
Mr. Blaney	Mr. Smith	Mr. MacDonald
Hon. Mr. MacIntyre	Mr. Kavanaugh	Mr. Devereux
Hon. Mrs. Mersereau	Mr. Steeves	Mr. MacLeod
Hon. Mr. Jamieson	Mr. A. Landry	Mr. D. Landry

Mrs. Jarrett	Mr. Johnson	Mr. Armstrong
Mr. McAdam		

NAYS - 6

Mr. Volpé	Mr. Robichaud	Ms. Weir
Mr. Sherwood	Mr. Mockler	Mr. Graham

Accordingly, Bill 4, *An Act to Amend the Companies 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 Motor Vehicle Act*, a debate arose thereon.

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 on the following recorded division:

YEAS - 30

Hon. Mr. Lockyer	Mr. McAdam	Ms. de Ste. Croix
Hon. Mr. Tyler	Hon. Mr. LeBlanc	Mr. Olmstead
Hon. Mr. Graham	Hon. Mrs. Kingston	Mr. Flynn
Hon. Mr. Lee	Mr. Allaby	Mr. DeGrâce
Hon. Mrs. Barry	Mr. Wilson	Mr. O'Donnell
Hon. Mrs. Breault	Mr. Smith	Mr. MacDonald
Mr. Blaney	Mr. Kavanaugh	Mr. Devereux
Hon. Mr. MacIntyre	Mr. Steeves	Mr. MacLeod
Hon. Mr. Jamieson	Mr. A. Landry	Mr. D. Landry
Mrs. Jarrett	Mr. Johnson	Mr. Armstrong

NAYS - 6

Mr. Volpé	Mr. Robichaud	Ms. Weir
Mr. Sherwood	Mr. Mockler	Mr. Graham

Accordingly, Bill 5, *An Act to Amend the Motor Vehicle 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 6, *An Act to Amend the Highway Act*, a debate arose thereon.

And after some time, Mr. Speaker declared it to be 12.30 o'clock p.m., and left the chair, to return again at 2 o'clock p.m.

2 o'clock p.m.

Mr. Speaker resumed the chair.

Debate resumed on the motion for second reading of Bill 6, *An Act to Amend the Highway Act*.

And after some time, Mr. Mockler laid upon the table of the House:

- Correspondence dated June 17, 1997, addressed to the Chair of the Standing Committee on Crown Corporations from Mr. Percy Mockler, MLA, Opposition Transportation Critic.
- Correspondence dated September 4, 1997, addressed to the Chair of the Standing Committee on Crown Corporations from Mr. Percy Mockler, MLA, Opposition Transportation Critic.
- Correspondence dated November 10, 1997, addressed to Mr. Percy Mockler, MLA, Opposition Transportation Critic, from Hon. J. Raymond Frenette, Premier.

- And the debate being ended, and the question being put that Bill 6 be now read a second time, it was resolved in the affirmative on the following recorded division:

YEAS - 30

Hon. Mr. Lockyer	Mr. McAdam	Ms. de Ste. Croix
Hon. Mr. Frenette	Hon. Mr. Byrne	Mr. Olmstead
Hon. Mr. Tyler	Hon. Mrs. Kingston	Mr. Flynn
Hon. Mr. Graham	Mr. Allaby	Mr. DeGrâce
Hon. Mr. Lee	Mr. Wilson	Mr. O'Donnell
Hon. Mrs. Barry	Mr. Smith	Mr. MacDonald
Mr. Blaney	Mr. Kavanaugh	Mr. Devereux
Hon. Mr. MacIntyre	Mr. Steeves	Mr. MacLeod
Hon. Mr. Savoie	Mr. A. Landry	Mr. D. Landry
Mrs. Jarrett	Mr. Johnson	Mr. Armstrong

NAYS - 6

Mr. Volpé	Mr. Robichaud	Ms. Weir
Mr. Sherwood	Mr. Mockler	Mr. Graham

Accordingly, Bill 6, *An Act to Amend the highway 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 3, *An Act to Amend the Police Act*, a debate arose thereon.

And after some time, Mr. Sherwood moved in amendment, seconded by Mr. Volpé:

AMENDMENT

THAT the motion for second reading be amended by deleting all the words after the word "that" and substituting the following:

Bill No. 3, *An Act to Amend the Police Act*, be not now read a second time but that the order for second reading be discharged and the subject matter of the Bill be referred to the Standing Committee on Law Amendments.

And the question being put, a debate ensued.

And the debate being ended, and the question being put, the amendment was negatived.

And the debate continuing on the motion that Bill 3, *An Act to Amend the Police Act*, be now read a second time.

After some further time, Ms. Weir moved in amendment, seconded by Mr. Graham:

AMENDMENT

THAT the motion for second reading be amended by deleting all the words after the word "that" and substituting the following:

The House declines to give second reading to Bill 3, *An Act to Amend the Police Act*, for the following reason:

Bill 3 extinguishes the constitutional authority of the provincial government to control and direct policing services that would be delivered under contract by the RCMP pursuant to the provisions of Bill 3.

And the question being put, a debate ensued.

During the debate, Mr. Speaker reminded members that cellular telephones are not permitted in the House.

Hon. Mr. Tyler rose on a Point of Order, his point of order being that the proposed amendment was out of order. Hon. Mr. Tyler referred to *Beauchesne's Parliamentary Rules and Forms 6th Edition*, **§ 670(2)** which states that a reasoned amendment may not propose an alternative scheme.

Mr. Speaker declared a recess at 4.20 o'clock p.m. and left the chair.

At 4.36 o'clock p.m., Mr. Speaker resumed the chair.

Mr. Speaker ruled the amendment to be in order as a "reasoned amendment" which conforms to the criteria set out in *Beauchesne's Parliamentary Rules and Forms 6th Edition*:

> **§670.** *This amendment leaves out all the words in the main question after the word "That" to add other words. A reasoned amendment is in the form of a motion and may fall into one of several categories:*
>
> *(1) It must be declaratory of some principle adverse to or differing from, the principles , policy or provisions of the bill.*

Debate resumed on the amendment.

And after some time, Mr. Speaker requested the honourable member for Saint John Harbour to restrict debate to the subject matter of the amendment.

And the debate being ended and the question being put, the amendment was negatived on the following recorded division:

YEAS - 6

Mr. Volpé	Mr. Robichaud	Ms. Weir
Mr. Sherwood	Mr. Mockler	Mr. Doucet

NAYS - 27

Hon. Mr. Lockyer	Mrs. Jarrett	Mr. A. Landry
Hon. Mr. Frenette	Mr. McAdam	Mr. Johnson
Hon. Mr. Tyler	Hon. Mr. LeBlanc	Mr. Olmstead
Hon. Mr. Graham	Hon. Mr. Byrne	Mr. DeGrâce
Hon. Mr. King	Hon. Mrs. Kingston	Mr. O'Donnell
Hon. Mrs. Barry	Mr. Duffie	Mr. MacDonald
Hon. Mr. MacIntyre	Mr. Wilson	Mr. Devereux
Hon. Mr. Richard	Mr. Smith	Mr. MacLeod
Hon. Mrs. Mersereau	Mr. Kavanaugh	Mr. Armstrong

Debate resumed on the motion that Bill 3, *An Act to Amend the Police Act*, be now read a second time.

Hon. Mr. Tyler rose on a Point of Order, requesting that the Speaker revert to Government Motions for the Ordering of the Business of the House.

Mr. Speaker advised that he would do so prior to 6 o'clock p.m.

Debate continued on the motion for second reading.

And after some time, Mr. Speaker reverted to Government Motions for the Ordering of the Business of the House.

Government Motions re Business of House

On motion of Hon. Mr. Tyler, seconded by Hon. Mr.Frenette,

RESOLVED, that when the House adjourns, it stand adjourned until 10 o'clock a.m., Tuesday next.

And then, 6 o'clock p.m., the House adjourned.