

IN THE SUPREME COURT OF NOVA SCOTIA

APPEAL DIVISION

Jones, Chipman and Freeman, JJ.A.

BETWEEN:

WILSON FUEL COMPANY	)	G.A. Richard
LIMITED	)	J.T. Rafferty
	)	for the appellant
Appellant)	
	)	J. McGowan, Q.C.
- and -	)	A.S. Beveridge
	)	for Irving Oil
)	
THE ATTORNEY GENERAL	)	W.M. Wilson
OF NOVA SCOTIA, THE	)	for Attorney General
BOARD OF COMMISSIONERS	)	of Nova Scotia
OF PUBLIC UTILITIES FOR)	
THE PROVINCE OF NOVA	)	Appeal Heard:
SCOTIA, IRVING OIL	)	December 13, 1990
LIMITED, THE RETAIL)	
GASOLINE DEALERS	)	Judgment Delivered:
ASSOCIATION OF NOVA	)	December 13, 1990
SCOTIA, FRED GEORGE,)	
JERRY BERMAN, ROY TRUDE)	
)	
Respondents)	

THE COURT: Appeal dismissed without costs per oral reasons for judgment of Jones, J.A.; Chipman and Freeman, JJ.A. concurring

The reasons for judgment were delivered orally by:

JONES, J.A.:

This is an appeal from the decision of the Public Utilities Board dismissing the appellant's application for the issuance of a retailer's license to sell gasoline at a service station to be located on Pleasant Street, in the City of Dartmouth.

The application was opposed by the operators of three other service stations in the area. There was conflicting evidence regarding the need for additional public service in the general area and the effect of increased competition. One of the proposals of the appellant was to sell gasoline at a price of 2 cents per litre less than competitors. This fact is referred to in the decision of the Board particularly when commenting on the appellant's expert witness. The Board also referred to the appropriate criteria to be considered as set forth in the Board's decision in 1981 on an application by Shell Canada.

The Board concluded by saying:

"The Board has carefully reviewed all the evidence and the exhibits before it, together with the submissions of counsel for the parties. It is to be noted that the Board is not satisfied from the evidence that the applicant either owns or has an option to obtain the property upon which it proposes to locate its station.

It is also to be noted that no evidence was presented which would establish that the public in this area is not presently being adequately served.

The Board is satisfied that the granting of a license for an additional gasoline outlet in the proposed area would have an adverse effect upon those outlets presently licensed. It is satisfied that those stations are not operating at maximum capacity. It is not satisfied that there have been any developments within the Pleasant Street area which would justify the granting of this application and it is satisfied that the number of presently existing stations and their hours of operation provide adequately for the requirements of the public in this area.

The application is therefore dismissed."

The appellant has raised two issues on this appeal:

"1. Did the Board improperly foreclose the application on the basis that it was not satisfied that the appellant had sufficient legal interest in the property where the proposed site was to be located?

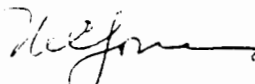
2. Did the Board err in law by failing to give consideration to the evidence presented regarding the applicant's proposed pricing policy and the implications of that policy?"

On the first issue the Court is not prepared to say that the interest of an applicant in a proposed site for a retail outlet is not a relevant consideration for the Board on an application for a retailer's license. We see no error in law in the Board considering that factor.


The primary issue on this appeal is the second ground of appeal. An appeal to this Court is restricted to a question of law or jurisdiction. The consideration of what is in the public interest, convenience and necessity is a matter for the Board. See **Union Gas Co. of Canada v. Sydenham Gas & Petroleum Co. Ltd.** (1957), S.C.R. 185, a decision of the Supreme Court of Canada.

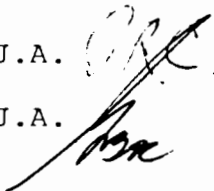
The main contention of the appellant is that the Board failed to consider the applicant's proposed pricing policy. This is based on the failure of the Board to deal specifically with the issue. From a review of the record we cannot conclude that the Board failed to consider that issue. The record in fact establishes the contrary. Apart from this case it is the duty of the Board under the **Gasoline and Fuel Oil Licensing Act** to fix gasoline prices in Nova Scotia. We are satisfied that the Board did consider the issue of pricing and accordingly we see no merit in the second ground of appeal.

The appeal is dismissed without costs.


J.A.

Concurred in:

Chipman, J.A. 

Freeman, J.A. 

DRS

1 Boardroom
2 Halifax, Nova Scotia
3 October 10, 1989

4 PROVINCE OF NOVA SCOTIA

5 BOARD OF COMMISSIONERS OF PUBLIC UTILITIES

6 IN THE MATTER OF THE GASOLINE FUEL LICENSING ACT

7 - and -

8 IN THE MATTER OF AN APPLICATION BY WILSON'S FUEL COMPANY
9 LIMITED FOR A RETAIL GASOLINE LICENSE UNDER SAID ACT

10
11
12 BEFORE: Mr. A. Green, Q.C.
Chairman-Commissioner

13 Mr. B. Nickerson, Q.C.
14 Commissioner

15 Mr. E. Rowe
16 Commissioner

17 PRESENT: D. Livingstone,
Solicitor for the
18 Applicant

19 Mr. J.M. MacGowan,
Solicitor in Opposition
for Irving Oil
with Mr. R. Chipman,
20 Article Clerk

21 Mr. D. Mader, in
22 Opposition for the
Retail Gasoline Dealers
23 Association

24 WITNESSES: Mr. David Collins,
25 Manager of Wilson Fuels
Limited

DRS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WITNESSES: Dr. Arun Mukhopadhyay,
Professor at St. Mary's
University

Mr. Fred George, Lessee
of Pleasant Street
Irving Station

Mr. Roger Burns,
Area Supervisor for
Irving Oil for Halifax-
Dartmouth

Mr. Dale Mader,
Executive Director of the
Retail Gasoline Dealers
Association

Mr. Jerry Berman, Owner
of Shell Service Station
on Pleasant Street

Mr. Roy Trude, Retailer
of Woodside Texaco