

Case Name:

Halifax (Regional Municipality) (Re)

**IN THE MATTER OF the Municipal Government Act
AND IN THE MATTER OF an Application by Halifax Regional
Municipality to confirm the number of councillors and polling
districts, and to confirm the boundaries of the polling
districts**

[2004] N.S.U.R.B.D. No. 9

2004 NSUARB 11

No. NSUARB-MB-03-01

Nova Scotia Utility and Review Board

P.W. Gurnham, Q.C., Panel Chair

R.A. Deveau, Member

W.D. Cochrane, Q.C., Member

Heard: November 13-14, 17-18, 24-25, December 15-16,
18-19, 2003, and January 30-31, 2004.

Decision: February 13, 2004.

(128 paras.)

Decision: Application approved in part. The number of polling districts and councillors is set at 23. The boundaries of the polling districts are amended.

Counsel:

Wayne Anstey, Q.C., for Halifax Regional Municipality.

Intervenors

Paul Hyland, on his own behalf.

Beverly Miller, on her own behalf.

Board Counsel

Thomas M. Macdonald.

Jennifer Cleversey, Articled Clerk.

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I BACKGROUND

1 This is an application by Halifax Regional Municipality ("HRM") to confirm the number of polling districts and the number of councillors at 23, and to confirm the present boundaries of the existing polling districts.

2 Halifax Regional Municipality was directed to file this application pursuant to a decision of the Nova Scotia Utility and Review Board ("Board") dated April 5, 2000 (the "2000 Board Decision"). In the 2000 Board Decision, the Board denied HRM's application to increase the number of councillors and polling districts from 23 to 24 (under the Municipal Government Act, "the Act", one councillor is elected for each polling district). Instead, the Board determined that the number of polling districts should remain at 23 for the October 2000 municipal election, and it directed HRM to file a further application by June 30, 2003, to establish the number of councillors and polling districts for the 2004 municipal election.

3 Wayne Anstey, Q.C., acted for HRM at the hearing. Prior to commencement of the hearing, Paul F. Hyland and Beverly W. Miller requested formal standing to cross-examine witnesses of HRM and call evidence of their own. Mr. Hyland was the Chair of the District Boundary Advisory Committee ("DBAC"), which was mandated by HRM Council to review the issue of the number of polling districts and councillors, and to recommend appropriate boundaries for the polling districts. Mr. Hyland was part of the majority of the DBAC that recommended a reduction of councillors and polling districts from 23 to 20. Ms. Miller was part of the minority of that Committee who opposed a reduction. Their requests to be granted formal standing were granted by the Board. In addition to the parties, Thomas M. Macdonald appeared as counsel for the Board.

4 The hearing was conducted at the Board offices on November 13, 14, 18, 25, December 15, 16, 18, 19, 2003, and January 30, 2004. In addition, four sessions were held to receive submissions from the public. These sessions were held at the Board hearing room on November 13, 2003 and January 31, 2004, at Cole Harbour High School on November 17, 2003, and at Bedford Junior High School on November 24, 2003. A list of those who made presentations at these sessions is attached as Schedule 1.

II HISTORY OF PROCEEDINGS

5 It is useful to briefly review the proceedings leading to this application.

6 In the 2000 Board Decision the Board directed HRM to file a further application no later than June 30, 2003, following extensive public consultation.

7 Municipal Council struck the DBAC on September 18, 2001, providing them with Terms of Reference to assist them in their task. Their initial responsibility was to recommend the appropriate size of Municipal Council. Following a public consultation process the DBAC, in a report dated September 4, 2002, recommended that the number of councillors be reduced to 20. Council accepted this recommendation.

8 The DBAC was then asked to recommend boundaries for the 20 polling districts.

9 The DBAC conducted another series of public meetings on the issue of boundaries. Table 1 sets out the 20 polling district proposal adopted by the DBAC:

Table 1

District Boundary Advisory Committee proposal
- 20 polling districts

Proposed Polling District

Eligible Voters

Variance

			+/- %	
A	Eastern Shore	12,675	-948	-7.0%
B	Cole Harbour/Preston	13,995	372	2.7%
C	Colby/Upper Woodlawn	15,169	1,546	11.3%
D	Eastern Passage/Woodside	14,405	782	5.7%
E	Dartmouth Centre	13,057	-566	-4.2%
F	Dartmouth North	12,643	-980	-7.2%
G	Waverley Road/Woodlawn	13,096	-527	-3.9%
H	Fall River/Musquodoboit Valley	11,874	-1,749	-12.8%
I	Lower Sackville	14,925	1,302	9.6%
J	Sackville/Beaver Bank	13,016	-607	-4.5%
K	Bedford Basin	12,402	-1,221	-9.0%
L	Hammonds Plains/St. Margaret's	14,283	660	4.8%
M	Timberlea/Peggy's Cove	12,260	-1,363	-10.0%
N	Spryfield/Sambro	13,091	-532	-3.9%
O	Armdale	13,336	-287	-2.1%
P	Quinpool/South End	14,150	527	3.9%
Q	Halifax Downtown	14,460	837	6.1%
R	Peninsula North	14,520	897	6.6%
S	Fairview/Clayton Park	14,762	1,139	8.4%
T	Rockingham/Clayton Park West	14,166	543	4.0%
	Total Number of Electors	272,450		
	Average Number of Electors Per Councillor	13,623		

10 This proposed 20 polling district configuration came before Municipal Council on May 13, 2003. Rather than adopt the DBAC recommendation, the following motion was adopted by Council:

"That Council submit an application to the Utility and Review Board to maintain the status quo (23 Districts) until the next scheduled review in 2006 as required by the Municipal Government Act, and, further, that Mayor Kelly forward a letter to Minister Peter Christie urging his support of this recommendation to the Utility and Review Board."

11 Accordingly, the existing polling districts from the October 2000 municipal election were adopted by Council and forwarded to the Board as part of an application to confirm the number of councillors and polling districts at 23. Table 2 sets out the existing 23 polling district configuration approved by HRM Council on May 13, 2003, and filed with the Board on June 30, 2003. A few numerical errors in some districts were subsequently corrected by HRM on November 4, 2003, and the corrections are incorporated herein:

Polling District	Eligible Voters	Variance +/- %
1 Eastern Shore-Musquodoboit Valley	9,070	-2,776 -23.4%
2 Waverley-Dutch Settlement	9,315	-2,531 -21.4%
3 Preston-Porters Lake	11,825	-21 -0.2%

4 Cole Harbour North-Cherry Brook	10,310	-1,536	-13.0%
5 Eastern Passage-Cole Harbour South	14,215	2,369	20.0%
6 Westphal-Waverley Road	8,855	-2,991	-25.2%
7 Woodlawn	9,905	-1,941	-16.4%
8 Woodside	9,285	-2,561	-21.6%
9 Albro Lake-Harbourview	11,240	-606	-5.1%
10 Dartmouth Centre	12,895	1,049	8.9%
11 Halifax North End	12,400	554	4.7%
12 Halifax Downtown	12,120	274	2.3%
13 Northwest Arm-South End	11,515	-331	-2.8%
14 Connaught-Quinpool	11,255	-591	-5.0%
15 Fairview-Clayton Park	12,110	264	2.2%
16 Prince's Lodge-Clayton Park West	17,415	5,569	47.0%
17 Purcell's Cove-Armdale	12,950	1,104	9.3%
18 Spryfield-Herring Cove	10,600	-1,246	-10.5%
19 Upper Sackville-Beaverbank	15,380	3,534	29.8%
20 Lower Sackville	12,560	714	6.0%
21 Bedford	11,635	-211	-1.8%
22 Hammonds Plains-Timberlea	14,580	2,734	23.1%
23 St. Margaret's Bay-Prospect	10,850	-996	-8.4%

Total Number of Electors	272,450		

Average Number of Electors 11,846
Per Councillor

12 In a letter dated August 15, 2003 to HRM, the Board raised concerns with respect to the elector variance in the HRM application. The Board stated in part:

"With respect to issue 2 (imbalance), the Board notes in the application filed by Halifax Regional Municipality that the percentage variance from the average number of eligible voters in District 16 is 47%. In four other districts the variance is greater than 25%.

In applying the decision of the Supreme Court of Canada Reference re: Electoral Boundaries Commission Act (1991), 81 D.L.R. (4th) 16 (also referred to as the Carter Decision), the Board has determined that a maximum variation of + 25% is the appropriate guideline to apply. This variation has been applied by the Board in a number of municipal boundary applications throughout the Province since the Carter decision was released in 1991."

13 On September 10, 2003, the Board issued Information Requests to HRM requesting that HRM file an alternative districting proposal adopting a maximum elector variance of +25%.

14 Table 3 sets out the Modified Proposal filed by HRM on November 4, 2003, in response to the Board's Information Requests:

Table 3 HRM Modified Proposal - 23 polling districts

Polling District	Eligible Voters	Variance +/- %	
1 Eastern Shore-Musquodoboit Valley	9,070	-2,776	-23.4%
2 Waverley-Dutch Settlement	9,605	-2,241	-18.9%
3 Preston-Porters Lake	11,825	-21	-0.2%
4 Cole Harbour North-Cherry Brook	10,005	-1,841	-15.5%
5 Eastern Passage-Cole Harbour South	14,215	2,369	20.0%

6 Westphal-Waverley Road	9,160	-2,686	-22.7%
7 Woodlawn	9,905	-1,941	-16.4%
8 Woodside	9,285	-2,561	-21.6%
9 Albro Lake-Harbourview	11,240	-606	-5.1%
10 Dartmouth Centre	12,895	1,049	8.9%
11 Halifax North End	12,400	554	4.7%
12 Halifax Downtown	12,120	274	2.3%
13 Northwest Arm-South End	11,515	-331	-2.8%
14 Connaught-Quinpool	11,255	-591	-5.0%
15 Fairview-Clayton Park	14,430	2,584	21.8%
16 Prince's Lodge-Clayton Park West	12,735	889	7.5%
17 Purcell's Cove-Armdale	12,950	1,104	9.3%
18 Spryfield-Herring Cove	10,600	-1,246	-10.5%
19 Upper Sackville-Beaverbank	13,015	1,169	9.9%
20 Lower Sackville	14,635	2,789	23.5%
21 Bedford	13,995	2,149	18.1%
22 Hammonds Plains-Timberlea	12,750	904	7.6%
23 St. Margaret's Bay-Prospect	12,680	834	7.0%

Total Number of Electors	272,450		

Average Number of
Electors Per Councillor 11,846

15 Much of the evidence at the hearing focussed on the relative strengths and weaknesses of the DBAC 20 polling district option (Table 1) versus HRM's Modified Proposal of 23 polling districts (Table 3). HRM's original proposal (Table 2) was not pursued at the hearing.

III WITNESSES

16 HRM called as witnesses, Hilary Campbell, a Planning Technician with Planning and Development Services; Angus Schaffenburg, a Senior Planner with Planning and Development Services; Howard Epstein, MLA for Halifax Chebucto; Ron Cooper, Councillor for District 4; Russell Walker, Councillor for District 15; and Len Goucher, Councillor for District 21.

17 Mr. Hyland and Ms. Miller gave evidence and Mr. Hyland also called Bob Harvey, Councillor for District 20.

18 Board Counsel called Robert Radchuck, FCA, P. Eng., who was qualified as an expert witness able to give opinion evidence on factors the Board may take into account in discharging its obligations under the Act; the methodology to be followed in a boundary review process; and sources of information and analysis of that information.

IV LEGISLATION

19 Section 368(4) of the Act sets out the criteria the Board is to consider:

368(4) In determining the number and boundaries of polling districts the Board shall consider number of electors, relative parity of voting power, population density, community of interest and geographic size.

V SIZE OF COUNCIL AND NUMBER OF POLLING DISTRICTS

A. Consultation Process

20 The Board expressed the view in its 2000 Board Decision - based on the evidence then before it - that a reduction in the number of polling districts was warranted. However, the Board in 2000 went on to say that it was not appropriate to order a reduction in that decision as:

"Such a step should only be taken after extensive public consultation and appropriate study of the benefits and disadvantages of various reduction scenarios."

21 HRM was directed to file not later than June 30, 2003 an application for a reduction in the size of Council to take effect for the October 2004 municipal election. As noted, HRM created the DBAC, made up of citizens of HRM, to advise Council with respect to the appropriate size of Regional Council and thereafter determine the delineation of the boundaries of the recommended districts.

22 The DBAC first met in January of 2002. The DBAC held a number of meetings, gathered information respecting representation in other Canadian municipalities, surveyed members of Halifax Regional Council, requested input from citizen groups and individuals and held 11 public sessions. In its first report it made a number of recommendations to Regional Council including:

- (a) a Regional Council comprised of 20 polling districts with an average population of 18,000 citizens be established for the next civic election;
- (b) the significant imbalance in voter parity per district be rectified by a redefinition of district boundaries.

23 A Minority Report of the DBAC recommending that 23 districts be retained was also submitted to Regional Council. Both the DBAC Report and the Minority Report appear in Exhibit H-1.

24 At paragraphs 11, 12 and 13 of the HRM application, HRM summarizes the consultation undertaken by the DBAC:

"11 Of the 24 members of Regional Council surveyed, 16 submitted completed surveys. On the question of the appropriate number of polling district(s), 9 supported the status quo, 2 supported an increase in the number of councillors, 2 suggested a decrease and 3 offered no opinion.

12 During the first round of public hearings held by the District Boundary Review (sic) Committee to recommend the number of polling districts, a total of 30 members of the public attended of which 24 made presentations with 17 being in favour of the status quo, 4 advocating a reduced Council and 3 with no position.

13 Sixty-one surveys or written submissions were received from organizations and individuals; of which 37 indicated that the number of districts should remain unchanged, 8 indicated the number should increase, 13 were in favour of a decrease, 1 was in favour of the status quo or a slight increase, 1 in favour of the status quo or a slight decrease and two offered no opinion."

25 On October 8, 2002, Halifax Regional Council accepted the majority recommendation of the DBAC by a vote of 13 to 11.

26 The DBAC then proceeded to deliberate in respect of the boundaries of the 20 districts. The Committee held seven public meetings and received 45 written submissions. The DBAC Final Report appears in Exhibit H-1. On May 13, 2003, Regional Council adopted by a vote of 12 to 9 the resolution noted in paragraph 12 thereby, impliedly at least, rejecting the DBAC recommendation.

B. Evidence of Witnesses

27 A number of witnesses addressed the issue of the size of Council, as did many of the speakers at the evening sessions, and written submissions received from the public.

28 HRM called Howard Epstein, a former Councillor for HRM and the City of Halifax, and now a member of the Legislature. He expressed the view that the status quo (23) works well. Indeed, he had introduced a Bill in the Nova Scotia Legislature (Bill No. 42) in April of 2003 to maintain the number of councillors at 23. While the Bill did not pass, he said it represented the views of the NDP caucus. He expressed the concern that if Council was significantly reduced in size it would create a problem with the Community Council structure within HRM. In his view the members of Community Councils would end up having to deal with a larger geographic area and it would be harder for members to know their area. He noted that 19 MLA's currently serve HRM in the Provincial Legislature and, if absolute parity were imposed provincially, that number might be as high as 21.

29 Councillor Ron Cooper, called by HRM, reviewed the role of a councillor, explaining three discrete functions:

- (a) district activities and interests;
- (b) Community Council activities and interests;
- (c) regional interests and activities.

30 He expressed the view that the 23 member Council was operating efficiently and supported the continuation of a Council of that size. In his view reducing the number of councillors from 23 to 20 would do nothing to enhance or improve the operation of the Municipality.

31 He indicated that the style of Municipal Council in HRM is not that of a board of directors which might suggest a smaller Council. Rather, the style was somewhere between a board of directors and a board of management. He noted that councillors, including himself, are directly accessible to their constituents and he believed that is what constituents have come to expect in HRM.

32 He noted in response to questions from the Board that Council had not specifically debated or addressed the issues of Council size or the governance structure.

33 Councillor Russell Walker likewise supported 23 districts. He indicated that while there were some growing pains following amalgamation, it is his view that those have been largely resolved and that the Council is now working well and efficiently. He noted Council rarely has to sit beyond its 10 p.m. deadline. Councillor Walker noted that the public input received by the DBAC did not support a reduction in the size of Council.

34 Like Councillor Cooper, he noted that he is directly accessible to his constituents and feels that this is the style of municipal government that works best.

35 Councillor Len Goucher also supports a Council of 23. He noted his accessibility to his constituents, stating that appears to be the style of government his constituents desire. He expressed the concern that a reduced Council may lead to larger Community Councils that would not be able to respond as effectively to community concerns.

36 Beverly Miller co-authored the Minority Report of the DBAC. She noted that the Minority Report favoured 23 councillors, which reflected the view of the public as canvassed by the DBAC. She felt that a smaller Council would mean less effective representation as each councillor would have more constituents. It was her strong sense, based on the DBAC consultation, that there was not a demand in the community for a reduced Council.

37 A majority of presenters at the public sessions spoke in favour of 23 polling districts including Hugh Pullen, Graham Reid, Alan Ruffman, Councillor Dawn Sloane, Marsha Parker, Paul Black and Councillor Bruce Hetherington.

38 Paul Hyland indicated that the recommendation of the DBAC for a Council of 20 was the consensus of the majority of the committee. He testified that the DBAC did not approach its task with any preconceived view of Council size.

39 He indicated that the DBAC reviewed:

- (a) the population/councillor ratio of other Canadian cities;
- (b) the Hayward Report prepared in conjunction with the 1995 amalgamation;
- (c) the Board Decision in respect of an application by the Cape Breton Regional Municipality dated November 5, 1999; and

(d) the 2000 Board Decision.

40 The committee also sought public input as noted earlier.

41 From its deliberations he indicated the committee felt that a Council size ranging from 18 to 20 councillors would allow for the effective operation of Community Councils, yet be a reasonable size. In his view, a Regional Council smaller than this would impair the effectiveness of Community Councils. The DBAC majority recommendation therefore was a Council comprised of 20 polling districts with an average population of 18,000 citizens per district. As noted earlier, on October 8, 2002, Regional Council approved the recommendation of 20 polling districts with an average population of 18,000 citizens.

42 Councillor Bob Harvey was the only councillor who appeared and spoke in favour of a significantly smaller Council. It was his view that changing from 23 to 20 would be largely unnoticeable. He felt there should be a more dramatic reduction, suggesting a Council ranging from 12 to 18.

43 The Board received and reviewed a number of written submissions from the public. There was support for maintaining 23, for increasing the size of the Council, and for reducing the size of Council. The majority of written submissions supported maintaining a Council of 23.

C. Community Councils

44 The Act (s. 521) permits HRM to establish Community Councils. There was little evidence presented on this issue during the 2000 hearing. The Community Council approach was first undertaken in the former Halifax County, but, according to the testimony, has become an essential feature of the governance structure of HRM. Community Councils undertake a number of duties related to planning, the provision of services, recommendation of by-laws and the implementation of municipal planning strategies. HRM currently has six Community Councils with as few as three or as many as seven councillors. Many witnesses, including those in favour and those opposed to reducing the size of Council, spoke favourably of the Community Council structure.

D. Absence of Debate in Council Upon Council Size

45 Curiously, it would appear HRM Council never discussed the issue of the appropriate size of Council or the style of municipal government that is appropriate for the Municipality. Rather, in this instance, they left it to a committee of seven citizens to deal with the issue.

46 Robert Radchuck noted that, while public consultation is important, public input alone should not determine the size of Council or the style of municipal government. Mr. Radchuck's view is that Council itself, following consultation with the public, senior staff and perhaps experts in the field, is best able to recommend the size of Council and the style of government.

47 All parties recognize that, under the Act, the ultimate decision on the size of Council rests with the Board.

48 Councillor Cooper and Councillor Goucher in response to questions from the Board noted that while Council had not undertaken such a discussion, it would be appropriate, in their view, for Council to do so.

E. Analysis and Findings on the Size of Council and Number of Polling Districts

49 The path that HRM followed in coming before the Board on this issue is one that should never be followed again.

50 HRM established the DBAC with a mandate to make recommendations on the appropriate number of polling districts. After public consultation and consideration the DBAC recommended 20. The DBAC report did not give any significant reasons or justification as to why it thought 20 was the appropriate number. Council accepted the recommendation.

51 Council then directed the DBAC to make a recommendation on the districting proposal. The DBAC, after consultation, did.

52 At that point Council, without debate, abandoned the DBAC process, and for reasons that are not clear to the Board, passed a motion that Council submit an application to maintain the existing polling districts.

53 Upon receiving that application the Board noted that the elector variance in the HRM proposal was grossly inconsistent with Board precedent and judicial precedent. It directed HRM to file an alternate proposal. Staff made an alter-

nate proposal to Council which was debated and amended at a regular Council meeting. The amended proposal then came forward to the Board. That proposal did not have the benefit of any public consultation.

54 The majority of witnesses called on behalf of HRM including Mr. Epstein, Councillor Cooper and Mr. Schaffenburg did not support the elector variances contained in the HRM Modified Proposal (see Table 3).

55 In the face of this confused background, the Board is called upon to decide the appropriate number of polling districts.

56 In discharging that task the Board, while mindful of the direction it gave in the 2000 Board Decision with respect to a reduction of Council, must base its decision on the evidence in this hearing. In the 2000 Board Decision the Board noted there was not sufficient evidence to order a reduction. In this proceeding as well, based on the evidence, the Board has determined that it should not reduce the size of Council.

(I) Style

57 Both the councillors and former councillors who appeared before the Board, as well as the majority of citizens who appeared before the Board who commented on the issue, appear to want a Council of 23 districts, or more, delivering a style of government in which councillors are directly accessible to their constituents. The concern was expressed that if Council becomes smaller that may reduce the amount of time that councillors spend in direct contact with citizens, responding to their concerns.

58 The Board accepts the evidence of a number of councillors that as time has passed after amalgamation, and since the 2000 Board Decision, the efficiency of Council meetings has improved.

59 The public appears to have no wish, according to the evidence, to reduce Council size, change its style, and move to a more executive style of government, which would involve councillors dealing with the public more through executive assistants than through (as at present) direct personal contact.

60 The weight of public opinion as expressed to the DBAC favoured maintaining a Council of 23. While the majority of the DBAC chose instead to recommend a Council of 20, it did not articulate any significant reasons as to why, in the face of this public opinion, it considered 20 to be appropriate. The public consultation process was ordered by the Board. The Board has taken the results of that consultation, and the weight of evidence in this hearing, on the appropriate number of councillors, into account in rendering its decision.

61 The Board's view is that a principal task for any Council is to determine (in some reasonable fashion) what the public's view is and to take account of that view in reaching whatever decision it does on the style of government.

62 Apart from the important question of governance style, which is intimately related to the number of councillors, the Board has on the evidence before it no reason to believe that a reduction in councillors will save money, as was suggested by some. Fewer councillors would almost assuredly mean an increase in the resources used to support councillors - for example, an increase in the number of support staff, and even (as in some municipalities elsewhere in Canada) the establishment of constituency offices.

(ii) Debate by Council

63 Council appears to have adopted the view that it was somehow inappropriate for it to decide what size of Council or style of municipal government should exist in HRM. Indeed, Municipal Council appeared to be of the view that it would be unseemly, or perhaps even somehow morally wrong, for Council to do this. They felt discussion, and resolution, of these issues should be left entirely to some other body, such as a citizen committee (the DBAC). It is the Board's view that the legislature's clear intent, as expressed in the Act, is otherwise: under the Act, it is not only entirely appropriate, but in fact necessary, for municipal councils to make this decision, subject to review by the Board. In the Board's view, however, decisions of this type by municipal councils are especially important ones, and should be made by council only after public consultation (either directly, or indirectly, through such mechanisms as a special committee, like the DBAC) and consultation with senior staff and perhaps experts in municipal governance. Council can then make an informed recommendation to the Board as to how many districts there should be, and why. Such a recommendation would have been very helpful to the Board in this proceeding.

(iii) Community Councils

64 The Board recognizes the crucial role of Community Councils in the governance structure of HRM and acknowledges that to be effective Community Councils must possess a minimum size and must not cover too large a geographic area. This means no fewer than 18 to 20 councillors are needed to maintain the current Community Council structure.

(iv) Finding

65 Based on the evidence before the Board, the Board determines that 23 is the appropriate number of councillors and polling districts.

VI CONFIGURATION AND DELINEATION OF POLLING DISTRICTS

66 The next issue is the configuration and delineation of the 23 polling districts having regard to the factors listed in s. 368(4) of the Act including relative parity of voting power, community of interest, number of electors, geographic size and population density.

A. Relative Parity

67 In June 1991 the Supreme Court of Canada issued its decision *Reference re Electoral Boundaries Commission Act* (1991), 81 D.L.R. (4th) 16 [also referred to as the Carter decision] which dealt with provincial electoral boundaries created by statute in the Province of Saskatchewan. McLachlin, J. (as she then was), speaking for the majority, found that the Canadian electoral system is rooted in the tradition of effective representation and not in the American tradition of absolute or near absolute voter parity, i.e., every vote must have exactly the same value. At pages 35-36 of the decision she made the following comments:

"What are the conditions of effective representation? The first is relative parity of voting power. A system which dilutes one citizen's vote unduly as compared with another citizen's vote runs the risk of providing inadequate representation to the citizen whose vote is diluted. The legislative power of the citizen whose vote is diluted will be reduced, as may be access to and assistance from his or her representative. The result will be uneven and unfair representation.

But parity of voting power, though of prime importance, is not the only factor to be taken into account in ensuring effective representation. ...

Factors like geography, community history, community interests and minority representation may need to be taken into account to ensure that our legislative assemblies effectively represent the diversity of our social mosaic."(emphasis added)

68 The issue in the Carter case was "the constitutionality of 'the variance in the size of voter populations among [the] constituencies' and 'the distribution of those constituencies among urban, rural and northern areas'." The variance refers to the percentage by which the voter population in any constituency or riding deviates from the average number of voters per elected official. The Supreme Court of Canada accepted the variations which had been adopted by the Saskatchewan Legislature - a variation of [plus or minus] 25% for southern ridings and [plus or minus] 50% for the northern ridings.

69 In 1991, the Nova Scotia Legislature established a Provincial Electoral Boundaries Commission. The terms of reference included the following:

"1. The primary factors to be considered by the Boundaries Commission to ensure "effective representation" are:

(I) of paramount importance, relative parity of voting power achieved through constituencies of equal population to the extent reasonably possible;

- (ii) geography;
- (iii) community history;
- (iv) community interests;
- (v) minority representation, including in particular, representation of the Acadian, Black and Mi'kmaq peoples of Nova Scotia;
- (vi) population rate of growth projections.

The Commission is to be guided by the principle that deviations from parity of voting power are only justified on the ground that they contribute to better government of the populace as a whole, giving due weight to regional issues within the populace and geographic factors within the territory governed."

70 In its 1992 report, *Effective Political Representation in Nova Scotia*, the Commission emphasized the importance of the relative parity of voting power and stated at page 16:

"criteria such as geography or community interest may be used to temper the idea of the 'relative parity of voting power,' but they do not supplant or eliminate that concept. Factors[,] such as community interests or geography[,] condition but do not cancel the importance of the first criterion, 'relative parity of voting power.' At the same time, minority group representation might be encouraged by creating somewhat smaller constituencies in terms of voters or population in order to generate more 'effective representation' for these groups."

The Commission created five "protected" constituencies. Of the remaining 47 constituencies all but two varied no more than 15% from the average number of voters.

71 Mr. Radchuck provided to the Board a range of documentation dealing with variances in electoral population in various governments across Canada, including the August 2002 report of the Nova Scotia Provincial Electoral Boundaries Commission entitled *Just Boundaries, Recommendations for Effective Representation for the People of Nova Scotia*. +25% appears to be a standard which has been used for some years in a number of Canadian jurisdictions. Information obtained from Elections Canada, a body set up by the Federal Parliament, and from other sources, indicates the following governments use that figure in either legislation or guidelines: the federal government, Nova Scotia, Prince Edward Island, New Brunswick, Quebec, Ontario, Alberta and British Columbia. It is common to allow +25% to be exceeded in certain circumstances. Alberta appears to deal with this very specifically, allowing a variance from 25% to as much as 50%, but only where the variance is below the average, and only for no more than four seats. For Nova Scotia, the stated target is +25%, except in "extraordinary circumstances", which include promoting minority representation for Acadian and black communities. Thus, for example, the Argyle, Clare and Preston seats have fewer than 7,400 voters, with most HRM seats having more than 15,000 voters.

72 Some governments, however, have set significantly smaller target variances than 25%. According to documentation filed with the Board, the governing legislation in Manitoba sets the permissible variance at +10% for southern seats, and +25% for northern seats. Newfoundland and Labrador sets variance at not greater than +10%, with the possibility of one district only being up to +25%. Saskatchewan (where the Carter decision originated) now sets the maximum variance for all of its southern seats (where the vast majority of the population is located) at +5%, with northern constituencies being set by a separate mechanism. Almost all witnesses before the Board, including councillors and others, urged the Board to consider adopting a target much smaller than 25%.

73 HRM's Modified Proposal (Table 3) showed variances ranging from -23.4% to +23.5%. Three of the witnesses called by HRM in support of HRM's case (Cooper, Schaffenburg and Epstein) considered this range to be unacceptable. Mr. Epstein said that the degree of variance gave him concern "from a fundamental notion of fairness." He went so far as to suggest HRM's proposal violated the Charter of Rights and Freedoms. Councillor Cooper felt the variances should be narrower than those proposed by HRM. He suggested a target range of 10% to 15%. Mr. Schaffenburg suggested +10% as a reasonable voter variance.

74 Councillor Walker on the other hand was prepared to accept a greater variance.

75 Mr. Hyland noted that the DBAC report was able to achieve a much narrower variance (-12.8% to +11.3%) than either of the HRM proposals. Mr. Hyland advised that during its deliberations the DBAC used a target variance of +10%.

76 Mr. Radchuck described parity of voting as the prime factor in setting district boundaries. He suggested a methodology for the Board to consider in dealing with parity. He stated at page 10 of his report:

"The recognition and acceptance of parity of voting power as the prime factor in setting polling district boundaries implies the total variance of +25% is an accumulation of variances with different degrees of importance. This notion can be supported by the following:

- The best situation for parity of voting power is when the number of electors in the polling district equals the average number of electors per polling district. In this case, the variance is 0%;
- The worst situation (within the permitted limited of +25%) occurs when the number of electors in a polling district is 25% above or 25% below the average number of electors per polling district;
- The 'non prime factors' include geography, population trends, population density, minorities and community of interest; and
- The prime factor and the non-prime factors imply a prime variance segment and a non-prime variance segment with a combined maximum of +25%.

Parity of voting power would be the ideal average of electors per polling district adjusted for geography, population density and population trends. The boundaries set using these factors should be in the range of 0% to +15%. The other factors such as minorities and community of interests could increase in the range from +10% to +25% depending upon the circumstances within each polling district."

B. Community of Interest

77 Many witnesses spoke to community of interest issues. Mr. Schaffenburg who, in the Board's view, has a very good familiarity with community of interest issues within HRM, indicated that in his opinion both the HRM Modified Proposal (Table 3) and the DBAC 20 district proposal, generally speaking, satisfy community of interest concerns.

78 Mr. Anstey submitted in argument that community of interest factors should relate to services or issues within municipal jurisdiction.

79 Mr. Radchuck defined community of interest as

"The compact and contiguous geographic area in which the residents have common or shared social, cultural, ethnic, or economic interests."

80 He indicated that the shared interests may be a result of history or culture, economic profiles, recreational facilities or a variety of other common ties between individuals and groups. He suggested there is virtually an unlimited number of communities of interest and it is unlikely that any polling district plan can recognize the boundaries of all communities of interest.

81 Many witnesses spoke to community of interest issues. Among the comments made were:

- (a) District 12 - a strong preference to keep the downtown area of Halifax in one district;
- (b) District 16 - Prince's Lodge and Hemlock Ravine Park were areas identified in evidence as having a community of interest with areas along the southern end of the Bedford Highway;

- (c) District 19 and 20 - There were many residents from Stonemount Subdivision who spoke concerning their community of interest with Sackville;
- (d) District 21 - there was a great deal of representation before the DBAC with respect to concerns of the residents of the older and more established areas of Bedford that their district remain within one district;
- (e) District 6 - The areas of Lake Loon and Cherry Brook were said to have a closer community of interest with Cole Harbour than with the Preston area.

These are but examples and are not meant to be exhaustive.

C. Analysis and Findings on Relative Parity, Community of Interest and Delineation of Polling Districts

82 Based on the evidence in this hearing, including some of the background materials used by Mr. Radchuck in developing his report, and the witnesses of HRM, the Board has determined that the target variance for parity shall be +10%, provided community of interest issues are generally satisfied. Any variance in excess of +10% must be justified in writing, and the more a variance exceeds 10% the greater and more detailed the written explanation that will be required. The Board would be reluctant, however, to approve a variance greater than +25%, particularly given the urban character of most of HRM. In addition, the Board considers it appropriate that relatively rapid changes in population in particular districts be considered. In particular, a negative variance for areas experiencing rapid growth should help to ensure maintenance of reasonable relative parity over a reasonable period of time.

83 This left the Board with a dilemma. The weight of the evidence, as noted above, favours a Council of 23, yet the DBAC proposed Council of 20 is much more satisfactory in terms of parity.

84 In the circumstances, the Board determined that it should request that Mr. Schaffenburg, supported by Ms. Campbell, prepare an alternative scenario based on the following direction from the Board, together with a few community of interest directions:

1. 23 districts;
2. The target variance for parity shall be +10%. Any variance in excess of +10% must be justified in terms of criteria identified in s. 368(4) of the Municipal Government Act. A negative variance in growth areas would be appropriate. For greater certainty, if a variance does exceed 10%, a written justification referring to s. 368(4) criteria will be required. The more the variance exceeds 10%, the greater and more detailed the justification which will be required.

85 This request to HRM Staff was consistent with the suggestion made by Mr. Anstey in argument:

"... if the Board were to decide that because of the evidence that 23 was the appropriate number and then it at the same time indicated what its concerns were with the 23 that had been proposed and ... maybe gave some general direction as to what it might like to see, then I suppose you could commission staff of HRM to work within those parameters that you gave to come forward with a solution that was better ... that would take less time to do than trying to look at the whole thing because I'm sure, you know, there are major parts of it that aren't going to change very much anyway."

86 With respect to community of interest, the Board finds the criteria that should be taken into account include the following:

1. history;
2. recreational issues;
3. tax rates, i.e., area rates;
4. services (water and sewer);
5. fire protection service areas;
6. traffic infrastructure and pattern;
7. planning boundaries;
8. language and ethnic origin;

9. school districts;
10. shopping patterns and business centres.

This list is not meant to be exhaustive.

87 The Board recognizes that several community of interest factors may overlap, meaning that the final delineation of a boundary must strike a compromise or accommodation among a number of factors. Further, communities of interest may change with the passage of time. Additionally, certain parts of HRM are experiencing faster growth rates compared to other parts of HRM, where neighbourhoods remain more stagnant. The Board accepts Mr. Schaffenburg's evidence that, generally speaking, the community of interest concerns were satisfied in both the Modified HRM application and the DBAC scenario. The Board indicated to Mr. Schaffenburg that where possible, similar attention to communities of interest should be taken into account in the alternative scenario. The Board specifically asked Mr. Schaffenburg to take into account certain of the submissions made by witnesses in connection with community of interest.

88 Table 4 sets out the 23 polling district configuration prepared by Mr. Schaffenburg and Ms. Campbell pursuant to the Board's direction at paragraph 84 above ("the 23 District Proposal"). This number of eligible voters is again taken from the 2001 Census figures.

Table 4 23 Polling District configuration prepared at the direction of the Board

Polling District	Eligible Voters	Variance +/- %
A Eastern Shore	10,475	-1,371 -11.6%
B Beaver Bank/Fall River	12,515	669 5.6%
C Preston/Porters Lake	13,180	1,334 11.3%
D Colby/Forest Hills	13,450	1,604 13.5%
E Woodside/Eastern Passage	11,995	149 1.3%
F Portland/East Woodlawn	12,060	214 1.8%
G Braemar/West Woodlawn	12,545	699 5.9%
H Dartmouth Centre	12,494	648 5.5%
I North Dartmouth	12,806	960 8.1%
J Bedford	11,635	-211 -1.8%
K Rockingham/Wentworth	10,208	-1,638 -13.8%
L Clayton Park West	8,935	-2,911 -24.6%
M Fairview/Clayton Park	11,955	109 0.9%
N Halifax North End	12,147	301 2.5%
O Halifax Downtown	12,120	274 2.3%
P Northwest Arm - South End	11,515	-331 -2.8%
Q Connaught - Quinpool	11,735	-111 -0.9%
R Purcell's Cove - Armdale	11,150	-696 -5.9%
S Spryfield - Herring Cove	10,600	-1,246 -10.5%
T Timberlea/Peggy's Cove	13,195	1,349 11.4%
U Hammonds Plains/Saint Margarets Bay	11,576	-270 -2.3%
V Lower Sackville	12,190	344 2.9%
W Upper Sackville	11,804	-42 -0.4%

Total Number of Electors	272,450	
Average Number of Electors Per Councillor	11846	

89 Mr. Schaffenburg also submitted an alternative scenario of 22 districts, which the Board did not adopt.

90 The Board, following public notice, reconvened the hearing on Friday, January 30th, and Saturday, January 31st, to hear views from the parties and the public with respect to the revised scenarios.

91 In his submission to the Board containing the revised scenarios, Mr. Schaffenburg provided a succinct analysis of his work.

"Overview

We reviewed the location of those districts that exceeded the target variance directed by the Board (see Table 1) as presented in the Halifax Regional Municipality application (MB-03-01) and also reviewed the revised Exhibit 1 (amended) prepared by Mr. Radchuck. The following areas were found to be of concern :

Eastern area: Four districts, which are adjacent to each other, namely District 4 (Cole Harbour North - Cherry Brook) at minus 15.5 percent; District 6 (Dartmouth Westphal - Waverley Road) at minus 22.7 percent; District 7 - Dartmouth Woodlawn at minus 16.4 percent and District 8 - Dartmouth Woodside at minus 21.6 percent were considerably below the target average. Districts 4, 6 and 7 also demonstrated low growth. On the Dartmouth side of the harbour District 9 was also below average with low growth. District 5 (Eastern Passage - Cole Harbour South) is above the target average at 20.0 percent. District 1 - Eastern Shore - Musquodoboit Valley is also considerably below the target average with minus 23.4 percent. Based on the foregoing, we concluded that the revised scenario should focus on a solution which had one fewer seat in the eastern area .

Central Area: District 20 (Lower Sackville) and District 21 (Bedford) were above the target average at 23.5 percent and 18.1 percent respectively. District 2 (Waverley - Dutch Settlement) was below the target average at minus 18.9 percent. District 19, while within the numerical variance on the positive side, demonstrated growth. We concluded that the scenario should focus on assigning electors to District 2.

Western Area: All of the districts except for District 15 (Fairview - Clayton Park) at plus 21.8 percent and District 18 (Spryfield - Herring Cove) at minus 10.5 percent were within the target average. We concluded that based on the building permits issued for new residential units by polling district from January 1, 2000 to December 31, 2003 for District 16 (Prince's Lodge - Clayton Park) and District 21 (Bedford) that the scenario should focus on assigning a new district to this area due to eligible voter increase suggested by the permits.

When revisions were made to the districts that exceeded the allowable variance, the domino effect also, in some cases, required a change in some districts that did meet the variance criteria.

Revised 23 District Scenario

The revised 23 District scenario is represented on Table 2 and Maps 2 to 9. In creating this scenario we considered those matters the Board raised in the memo. One principle we attempted to apply was that districts with higher than the average permits for residential building should have a minor variance within the target range. However, due to other factors that we must consider under Section 368(4) this was not always desirable or practical. As requested here is the commentary on those districts that do not meet the target variance of plus or minus 10 percent of the eligible voter average of 11,846.

District A (Eastern Shore): The Carroll's Corner area was added to this proposed District. At minus 11.6 this proposed District is slightly below the target variance and has had below average total building permits for residential dwellings. This proposed district has the largest area of any

district and is very rural in nature with a very low population density. Although an additional area has been added it may still remain a manageable geographical size. Section 368 (4) allows for this variation due to the size and large geographic area.

District C (Preston/Porters Lake): This area is slightly above the target variance at plus 11.3. The Cherry Brook and Lake Loon area has been included in this District. We are aware of the evidence before the Board that the Cherry Brook had more of a community of interest with areas to the south rather than to the adjacent predominately black communities in the Preston area. This area has eligible voters of 1355 and therefore could not be assigned to the District D (Colby/Forest Hills) without increasing the plus variance to 25.0 percent. The scenario presented does have the advantage of including all of the African Canadian communities in that area into one district. Further Alfreda Withrow in One City-Many Communities on page 43 indicated that historically Preston, East Preston, North Preston, Lake Loon, Cherry Brook, Lake Major and Montague Gold Mines were all considered to be part of the Preston Township.

District D (Colby/Forest Hills): This has a plus variance of 13.5 percent and has had some eligible voter growth as demonstrated by the permit activity. We tried a number of options, however, due to some of the infrastructure that surrounds these communities, we could not find an alternate boundary to suggest that would reasonably meet the test of community of interest.

District K (Rockingham/Wentworth): This proposed District, which is just below the minus maximum variance at 10.9 percent includes communities such as Clayton Park, Rockingham and Birch Cove and newer areas such as Royale Hemlocks. This proposed District has had above average permit activity and an approved development agreement for Royale Hemlocks with an ability for more than 900 additional dwelling units. An application for more than 1000 dwelling units is being processed for Neighbourhood "B" of the Wentworth secondary planning area, which lies to the north of Royale Hemlocks.

District L (Clayton Park West): The assigning a new district to this area to enable the growth indicated by the permits does create a District considerably below the target average. We believe that based on the more than 1900 issued permits from 2000 to 2003 that the voter population has increased significantly beyond that indicated by the 2001 Census such that the actual voter population is probably well within the acceptable variance today and will continue to do so by the time of the next review in 2006.

District S (Spryfield - Herring Cove): This District has the same boundaries as proposed District 18 (Spryfield - Herring Cove) with a variance of minus 0.5 less than the target variance. This is very close to the maximum target variance and may be reasonable given the more rural nature of part of this district. However, it does not meet the principle that districts with few permits should have a positive variation. Given the fact that the District is bounded on three sides by ocean and hinterland, it is a difficult area to adjust further.

District T (Timberlea/Peggy's Cove): This district does not meet the principle that districts with higher than the average permits for residential building should have minus variance within the target range. This has had a higher than average permit activity and has clear growth potential. However, the proposed District U (Hammonds Plains/St. Margarets Bay) which is adjacent to this area also has a very high level of permit activity and has also clear growth potential, as does the Clayton Park West area on the other side.

Considerations in Preparing the Alternative Scenario

The considerations that the Board suggested we should include in developing the 23 scenario are addressed below using the subsections in the memo.

Subsection A. The revised scenario takes community of interest into account where ever possible given that we were provided with a target parity.

Subsection B. Building permits issued for new residential units by proposed district from January 1, 2000 to December 31, 2003 were used as rough indicators of the change in the number of electors. Ideally a proposed district with greater than the average number of building permits issued for new residential units should have eligible voters less than the average and a proposed district with less than the average number of building permits should have eligible voters greater than the average. For the most part, this guideline was applied; however, this is not always practical as other factors such as geography, and community of interest also had to be taken into account.

Subsection C: We believe that proposed District A is justified to be slightly under the target variance as indicated. Carroll's Corner area was added to this district as a way of increasing the voter population and including an area that has a similar rural character to many of the other communities in this district.

Subsection D: District 12 was not changed in this scenario. We did consider assigning a portion of the Victoria Road area to proposed District O (Halifax Downtown) and removing a portion of proposed District P (Northwest Arm - South End). This would have enabled an increase in the eligible electors in proposed District Q (Connaught - Quinpool), which has a minus value and minimal growth. The various changes considered would have violated the test of keeping communities together by splitting the districts at Jubilee Road.

Subsection E: Proposed District K (Rockingham/Wentworth) maintains the areas of Hemlock Ravine Park and the communities along the Bedford Highway in one district.

Subsection F: The Stonemount area in this scenario was assigned to the Sackville District. The Armcrest subdivision and the Lucasville Road area was assigned to proposed District B (Beaver Bank/Fall River). The Lucasville Road area was included with the areas of Middle and Upper Sackville.

Subsection G: The boundaries of the former Town of Bedford are co-incident with the proposed District J (Bedford).

Subsection H: This scenario includes the proposal in the staff report of October 15, 2003 with respect to the Hammonds Plains, St. Margarets Bay, Beechville, Lakeside and Timberlea areas except that the Hubley area had to be placed in the District T (Timberlea/Peggy's Cove) to balance electors. That is the area generally encompassed by the present Districts 22 and 23. We were unable to move the boundary to Peggy's Cove as the proposed District U (Hammonds Plains/St. Margarets Bay) has had a very high number of permits issued for dwelling units."

92 The Board in its sessions on January 30th and 31st heard firstly from Mr. Schaffenburg, and then from a number of councillors and members of the public who raised concerns with respect to several of the proposed districts, details of which will be discussed in this section.

93 The Board has decided to adopt the 23 District Proposal as filed by Mr. Schaffenburg with certain adjustments to District D (Colby/Forest Hills) and District C (Preston/Porters Lake).

94 The Board notes that HRM is a dynamic and growing community. The population in some areas of HRM is growing rapidly. A consequence is that some communities in HRM which had been associated in one district in the past simply cannot remain together, if any reasonable voter parity is to be maintained. For example, residents of current District 4 noted that since the creation of an Area Service Commission in 1954, the residents of Cherry Brook, Lake Loon and Humber Park had an association with areas to the south comprising District D (Colby/Forest Hills). In Mr. Schaffenburg's 23 District Proposal these communities were included in District C, to the east, (Preston/Porters Lake). While the Board understands and accepts these important historic associations, population growth in the area over time means the Board is unable to include all of these areas in one district while still maintaining a reasonable elector variance. A similar situation exists with respect to Sackville/Beaverbank.

95 With respect to matters raised in the January 31st session the Board finds as follows:

(I) District D - Colby/Forest Hills

96 In addition to the submissions from residents noted above, the Board received a memo from Councillor Harry McInroy urging the Board to adopt Mr. Schaffenburg's 23 District Proposal. He preferred that proposal for a number of reasons including: that certain historical sites including Cole Harbour Long Hill View, the Bell House and the Cole Harbour Meeting House would be included with the balance of Cole Harbour; that the No. 7 Highway is a natural boundary; and that there is no practical negative impact if some parts of Westphal are in one district and other parts in another. Both the submissions of the residents and Councillor McInroy have merit. In the end, the Board has amended Mr. Schaffenburg's 23 District Proposal by adjusting the boundary of District C westward to the west of the Ross Road area and to the east of the Humber Park Subdivision. The Humber Park Subdivision and associated areas are transferred to District D. The change has the effect of moving the Home for Coloured Children and the Black Cultural Centre to District C. Cherry Brook remains in District C along with Preston and Porters Lake.

(ii) District E - Woodside/Eastern Passage

97 Councillor Bruce Hetherington generally supported the configuration of District E, but suggested that the north-east boundary should follow existing arterial streets. While the Board agrees with Councillor Hetherington that where possible clearly identifiable boundaries, such as Portland Street, should be followed, the Board finds that adjusting the boundary in this manner would have an unacceptable impact on elector parity. The Board for that reason has not adjusted the boundary as requested by Mr. Hetherington.

(iii) District T - Timberlea/Peggy's Cove and District U - Hammonds Plains/St. Margaret's

98 Councillor Reg Rankin objected to the configuration of proposed District T and District U. District T includes the communities of Beechville, Timberlea and Hubley in one district along with the coastal communities stretching from Glen Margaret to West Pennant. District U includes the communities of Hammonds Plains and Tantallon and the coastal communities stretching from Glen Margaret to Hubbards. In addition, several letters were received from residents raising similar concerns. They would prefer the existing configuration of District 22 and 23 whereby Timberlea and Hammonds Plains are in one district and the coastal areas are in another. Mr. Schaffenburg, in evidence, and Mr. Anstey in argument spoke to the desirability of having the two growth areas of Timberlea and Hammonds Plains in separate districts in order to better maintain voter parity into the future. The Board agrees.

99 The Board notes the adjacent communities of Beechville, Timberlea, Lakeside and Hubley along Highway 103, are all now in District T. Hammonds Plains and the Upper Tantallon area, both of which are served by an ever expanding recreational and commercial development surrounding Exit 5 on the 103 Highway, are in District U. The Board also notes that this configuration is the one recommended by the DBAC following public consultation. The Board confirms Districts T and U as suggested by Mr. Schaffenburg.

(iv) District B - Beaverbank/Fall River

100 The 23 District Proposal separates the communities of Beaverbank and Upper Sackville. This configuration gave the Board significant concern because of the historical community of interest between Beaverbank and Upper Sackville as noted by Councillor Brad Johns and other residents who testified. The Board recalled Mr. Schaffenburg and discussed with him a number of possible configurations in an attempt to resolve this issue, but all of them resulted in unacceptable positive voter parity in District V (Lower Sackville) and unacceptable negative voter parity in the balance of District B (Fall River and Grand Lake).

101 The Board notes that the proposed District B leaves all of the community of Beaverbank intact and in one district along a traditional boundary, the railway line. In addition, the line which separates District B (Beaverbank/Fall River) from District W (Upper Sackville) is generally the same dividing line used to separate provincial constituencies, i.e., Beaverbank and Upper Sackville are separate in the provincial legislature as well.

102 In order to maintain reasonable voter parity, the Board approves District B as outlined in the 23 District Proposal.

(v) District M - Fairview/Clayton Park

103 Concerns were expressed by Councillor Russell Walker that the area to the north of Lacewood Drive and Bay-view Road was being separated from Fairview/Clayton Park and included in District K (Rockingham/Wentworth). Mr. Schaffenburg noted that District K already had a variance of -13.8%. To remove this area from District K would result in a variance which the Board finds unacceptable. Again, in order to maintain an acceptable voter parity, District M and K as contained in the 23 District Proposal are approved.

(vi) Finding

104 In the Board's view Mr. Schaffenburg's 23 District Proposal (as revised by the Board) provides a configuration which meets the requirements of s. 368(4) of the Act and is approved. The Board was impressed with Mr. Schaffenburg's knowledge of HRM, his thoughtful analysis, and his forthright answers to Board questions.

VII OTHER ISSUES

The DBAC

105 While the Board appreciates the submissions of all witnesses in the hearing and presenters in the public sessions, the Board wishes to specifically recognize the contribution of Mr. Hyland, Ms. Miller and the other members of the DBAC. For no reward, other than the discharge of their public duty, the DBAC members went through a lengthy public consultation and deliberation process in coming to their recommendations. In addition, Mr. Hyland and Ms. Miller have participated in 12 days of hearings before this Board. The Board feels that such public service is worthy of recognition in this decision.

VIII GUIDANCE FOR FUTURE APPLICATIONS

106 The Board feels that it would be useful to provide some guidance to HRM and other municipalities with respect to future applications pursuant to ss. 368 and 369 of the Act. Several witnesses indicated that such guidance from the Board would be welcome, including Mr. Hyland, Mr. Radchuck, Councillor Goucher and others.

A. Number of Councillors and Polling Districts

107 It is the Board's view that the logical starting point under the Act is for Council to determine the desired number of councillors. Questions related to the distribution of polling districts should be addressed in a second stage.

108 Determining the size of Council involves the consideration of the desired style of Council, the governance structure of Council, and a determination of an effective and efficient number of councillors.

109 The style of government is a question which should not be decided by Council until adequate public consultation has occurred respecting the expectation of constituents.

110 However, the size of Council and its governance structure is a matter to be determined by Council in an informed debate after further consultation. On this issue it would be helpful to consult senior staff and perhaps experts in the field.

111 Once the total number of councillors and polling districts is determined, the task becomes one of distributing the polling districts to satisfy the objectives listed in s. 368(4) of the Act.

B. Relative Parity

112 As noted in paragraph 82, the Board believes that the target variance for relative parity for all future applications should be +10%. A variance in excess of +10% must be justified in terms of the criteria identified in s. 368(4) of the Act. A negative variance in growth areas would be appropriate. An example of this is proposed District "L" (Clayton Park West) which is -24.6% according to the 2001 census data as shown in Table 4 (paragraph 88). However, as is explained in Mr. Schaffenburg's analysis (paragraph 91), growth has been so rapid in this district that the true variance today is probably less than -10%. If a variance does exceed 10% the Board would expect justification. The more the variance exceeds 10% the greater and more detailed the justification the Board will expect.

C. Community of Interest and Geography

113 Community of interest criteria to be taken into account include:

-- history

- recreational issues
- tax rates, ie. area rates
- services (water and sewer)
- fire protection service areas
- traffic infrastructure and patterns
- planning boundaries
- language
- ethnic origin
- school districts
- shopping patterns and business centres

There may have to be accommodation of competing community of interest factors. Geography may also be a factor: in the present context of this decision, this term includes problems arising from a polling district having a much larger than average land area, and a consequent much lower than average density of voters per square mile. Under the Revised 23 District Proposal, HRM District A (Eastern Shore) in Table 4 falls in this category. Some of the matters to be considered with such a proposed district are alluded to by Mr. Schaffenburg at paragraph 91, above. Among other things, the Board notes that a district of this type can also sometimes present challenges in terms of travel times for a councillor. The variance for District A is -11.6%, which the Board considers appropriate in these particular circumstances.

D. Voter Data

114 The Board encourages municipalities to use the best quality voter data available, including, but not restricted to, census data or elector enumeration. Such information is invaluable in municipalities experiencing areas of significant growth. Mr. Radchuck's report was of assistance in identifying sources and types of data. These would include:

- census data
- electoral lists
- building permit information to the extent it identifies growth areas
- property assessment information

Where there is a significant presence of factors relating to language and/or ethnic origin, suitable information should be obtained from the census or other reliable sources.

E. Public Consultation

115 Just as with determining the desired number of districts, public consultation is essential to a successful process of setting boundaries. Ideally, municipalities should do this in two phases: a first set of public consultations and hearings prior to setting tentative district boundaries, and then another round of public consultations once tentative boundaries have been determined. In the present case, because of the very limited time available (the polling district boundaries must be determined no later than March 15, 2004), there has been a less than ideal level of public consultation on the issue of the tentative boundaries. Nevertheless, the Board has endeavoured to ensure there was as much public consultation as time permitted and has taken that public input into account before issuing its Order.

IX SUMMARY OF THE DECISION

116 In this decision, the Board considered a proposal by HRM for a 23 seat Council, and a proposal by the majority of the DBAC (a non-elected committee of citizens) for a 20 seat Council.

117 The Board has chosen to reject both these proposals. It rejected the HRM proposal because it considers the deviations, or variances, from relative voter parity (i.e., the variation in the number of voters per polling district) were too great in HRM's proposal. Indeed, most of the persons who testified before the Board in this proceeding, including most of the HRM Councillors who testified, strongly urged the Board to adopt a much closer voter parity than is found in the HRM proposal.

118 The Board rejected the DBAC 20 district proposal because it concluded that reducing the number of Councillors from 23 (a possibility contemplated in the 2000 Board Decision) is contrary to the overwhelming weight of the evidence before the Board in the present hearing. That evidence includes the views of the public, most of whom, according to the evidence, want a Council of the same, or even greater, size.

119 At the request of the Board, HRM staff produced, while the hearing was underway, a new electoral plan with 23 polling districts (as in the HRM proposal), but with much better parity. It is that plan, with a few modifications, which the Board has adopted.

120 In this decision, the Board has made findings in three principal areas: first, the process which the Board considers should be followed in applications of this type; second, Council size; and third, parity.

121 With respect to the first finding, respecting the process as a whole, the Board considers that the process followed by HRM in pursuing this application was unacceptable, and one that should never be followed again by either HRM or any other municipality (see paragraph 49). In future applications, the Board considers that municipal councils should, prior to any consideration of setting boundaries or variances from voter parity, first determine the number of councillors which is appropriate. The decision as to the number of councillors is an especially important one, and should be made by a municipal council only after extensive public consultation, as well as consultation with others, such as senior staff or consultants. Council can then make an informed decision as to how many polling districts there should be, and why (paragraph 63; paragraphs 107-111). In the second step of the process, Council should determine the boundaries for polling districts - once again only after extensive consultations with the public and others. Both of these decisions by council (on the number of councillors, and on the boundaries of polling districts), are ultimately subject to the Board's approval.

122 With respect to the second finding, council size, the Board finds that 23 is, on the evidence before it, the appropriate number of councillors and polling districts (see, in particular, paragraph 49 and following).

123 The third finding respects relative parity. Relative parity relates, in essence, to the concept of "one person, one vote", with the ideal being a variance of 0% (where the number of voters for each polling district is exactly the same). The Supreme Court of Canada has made it clear that this concept does not apply in Canada with the same rigour that it does, for example, in elections to the House of Representatives in the United States, and that various factors can properly be taken into account in justifying voter parities which stray from 0%. Thus, in Canada, it is not uncommon to find variations of 25%, or even 50%, contemplated in the relevant legislation. Indeed, the Board considers that 25% has come to be regarded by some municipalities as the normal target variance. While the Board does consider that, in some exceptional instances, a variation of +25% can indeed be justified for municipal polling districts, it believes a strong case must be made before such a variance is accepted.

124 The Board considers that the legislation, the case law, and the evidence in this proceeding, make it clear that the concept of relative parity - of hewing as closely as possible to the concept of "one person, one vote" - is a key one in setting the boundaries of polling districts. The Board is, however, conscious that relative parity should not be applied blindly: those setting the boundaries of polling districts must always remain sensitive to the various other factors which may need to be taken into account, including, for example, such things as community of interest, race, language and geography. The Board has kept these factors in mind, while endeavouring in this decision to set a higher level of parity than perhaps has generally been achieved in the past in municipal polling districts. It will expect HRM, and other councils, to likewise address themselves to this goal in future applications of this type. Specifically, the Board determines in this decision that the proper target variance for parity in municipal polling districts in Nova Scotia, both for purposes of this proceeding and for future proceedings of this type, shall be +10%, provided such issues as community of interest are generally satisfied. Any variance in excess of +10% must be justified in writing, and the greater the variance, the greater and more detailed the written justification that will be required.

125 Table 5 sets out the 23 polling district configuration approved by the Board:

Table 5

23 Polling District configuration prepared at the direction of the Board

Polling District

Eligible

Variance

	Voters	+/- %
A Eastern Shore 10,475	-1,371	-11.6%
B Beaver Bank/Fall River 12,515	669	5.6%
C Preston/Porters Lake 13,118	1,272	10.7%
D Colby/Forest Hills 13,512	1,666	14.1%
E Woodside/Eastern Passage 11,995	149	1.3%
F Portland/East Woodlawn 12,060	214	1.8%
G Braemar/West Woodlawn 12,545	699	5.9%
H Dartmouth Centre 12,494	648	5.5%
I North Dartmouth 12,806	960	8.1%
J Bedford 11,635	-211	-1.8%
K Rockingham/Wentworth 10,208	-1,638	-13.8%
L Clayton Park West 8,935	-2,911	-24.6%
M Fairview/Clayton Park 11,955	109	0.9%
N Halifax North End 12,147	301	2.5%
O Halifax Downtown 12,120	274	2.3%
P Northwest Arm - South End 11,515	-331	-2.8%
Q Connaught - Quinpool 11,735	-111	-0.9%
R Purcell's Cove - Armdale 11,150	-696	-5.9%
S Spryfield - Herring Cove 10,600	-1,246	-10.5%
T Timberlea/Peggy's Cove 13,195	1,349	11.4%
U Hammonds Plains/Saint Margarets Bay 11,576	-270	-2.3%
V Lower Sackville 12,190	344	2.9%
W Upper Sackville 11,804	-42	-0.4%

Total Number of Electors 272,450

Average Number of
Electors Per Councillor 11846

126 Maps of the 23 Districts are attached as Schedule 2. [Editor's note: Schedule 2 was not attached to the copy received from the Court and therefore is not included in the judgment.]

127 HRM is directed to file descriptions of each of the districts for approval by the Board. In this decision the final districts are identified by letter in order to distinguish them from existing districts. In the final order HRM may revert to numbering the districts 1 through 23 and, if it wishes, provide whatever name, for each of the districts, HRM considers to be appropriate.

128 An Order will issue following approval of the district descriptions.

* * * * *

SCHEDULE 1
PUBLIC SESSIONS

November 13, 2003
Board Offices

Hugh Pullen
Benard Smith
Graham Reid
Alan Ruffman
Dawn Sloane
Marsha Parker

November 17, 2003
Cole Harbour High School

Phil Elliott
Paul Black
Ian Bailey
Ron Cooper

November 24, 2003
Bedford Junior High School

Carolyn MacFarlane
Wade Marshall
James Duncan
Peter Smith
Bob Harvey
Brad Johns
Debbie Hum
Dan MacNamara
Rick Benwell
Ian Weir
Ron Wilson
Mike Gaudet
Wayne Ingalls
Paul Russell
Sandra Guthro
James Abbey

January 31, 2004
Board Offices

Brad Johns
Dorothy Selig
Ron Moakler
Brian Pitts
John Harlow
Ron Cooper
Shalom Mandaville
Bruce Hetherington
Robin Barrett
Peter Majeau
Leslie Walker
Reg Rankin
David Hendsbee

* * * * *

SCHEDULE 2

[Editor's note: Schedule 2 was not attached to the copy received from the Court and therefore is not included in the judgment.]

cp/e/nc/qltlc