

NOVA SCOTIA UTILITY AND REVIEW BOARD



**IN THE MATTER OF THE HALIFAX REGIONAL MUNICIPALITY CHARTER
AND 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 alter the boundaries of polling districts

BEFORE:

Peter W. Gurnham, Q.C., Chair
Roland A. Deveau, Q.C., Member
Murray E. Doehler, CA, P.Eng., Member

COUNSEL:

HALIFAX REGIONAL MUNICIPALITY
Mary Ellen Donovan, Q.C.
Sara Knight, LL.B.

INTERVENORS:

Don Mills, Corporate Research Associates
Allan Smith (Did not appear)

BOARD COUNSEL:

S. Bruce Outhouse, Q.C. and Richard J. Melanson, LL.B.

HEARING DATE:

June 20 - 22, 2011

FILED UNDERTAKINGS:

June 22, 2011

DECISION DATE:

July 27, 2011

DECISION:

Application denied. Number of polling districts and councillors set at 16. The matter is remitted back to the Municipality to prepare polling district boundaries to be reviewed by the Board.

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I INTRODUCTION

[1] The *Municipal Government Act*, S.N.S. 1998, c. 18 (the "*Act*") requires the council of every municipality to conduct a study and make an application to the Nova Scotia Utility and Review Board (the "Board") to confirm or alter the number of councillors and the boundaries of the polling districts. The *Act* applies by virtue of the *Halifax Regional Municipality Charter*, S.N.S. 2008, c. 39 ("*HRM Charter*"). Section 369 of the *Act* states:

369 (1) In the year 1999, and in the years 2006 and every eighth year thereafter the council shall conduct a study of the number and boundaries of polling districts in the municipality, their fairness and reasonableness and the number of councillors.

(2) After the study is completed, and before the end of the year in which the study was conducted, the council shall apply to the Board to confirm or to alter the number and boundaries of polling districts and the number of councillors.

[2] Halifax Regional Municipality ("HRM" or the "Municipality") applied to the Board on December 30, 2010 to confirm the present number of councillors and polling districts at 23, and further, to alter the boundaries of polling districts.

[3] Following 12 days of hearings, the Board's Decision of February 13, 2004, *Re Halifax Regional Municipality*, [2004] NSUARB 11, set the number of polling districts for HRM at 23, and set standards for relative parity of voting power. It also established HRM's polling district boundaries.

[4] In a letter dated July 19, 2006, the Board granted a request by HRM to follow a simplified process for the 2006 review under s. 369 of the *Act*. This approval was provided on the basis of the extensive review and hearing process which occurred in 2003 and 2004, together with an undertaking by HRM to conduct a comprehensive review of the number and boundaries of polling districts in 2010. Accordingly, HRM was

not required to consider the number of councillors and polling districts in the 2006 review process. The 2006 review was limited to boundary adjustments.

[5] The Board approved the 2006 application on the basis of 23 polling districts, each electing one councillor. Also, the hearing resulted in four changes to the polling district boundaries. In all other respects, the boundaries of the polling districts were confirmed.

[6] With respect to the deferral of a full review of the number of councillors and polling districts, the Board stated:

[50] Further, HRM will undertake a comprehensive review of the number and boundaries of polling districts in 2010, in advance of the municipal election in 2012. The Board is confident that HRM will continue its practice of ensuring that a thorough public consultation process occurs as part of that upcoming review. In order to allow sufficient time for the application to be considered in advance of the 2012 municipal election, the application must be filed no later than December 31, 2010, unless directed otherwise by the Board.

[2007 NSUARB 166]

[7] HRM's present application was filed on December 30, 2010. On January 10, 2011, the Board issued a Hearing Order setting down the timeline leading to a hearing commencing June 20, 2011. The Hearing Order allowed sufficient time for requests by formal intervenors to participate, the exchange of Information Requests, and the filing of letters of comment by the public and requests to speak at the evening session.

[8] There are two components in all polling district boundary applications: first, setting the number of councillors, followed by determining the boundaries of the polling districts themselves. At the request of HRM's counsel, the Board conducted a preliminary hearing by telephone on February 21, 2011. HRM proposed that the Board first hear evidence on determining the number of councillors and make a decision on that issue prior to hearing evidence on the proposed district boundaries.

[9] The Board approved HRM's request. In a letter dated February 22, 2011, the Board concluded:

There were no objections to HRM's proposal to split the process. It was agreed that the Board would hear evidence on the governance issue (number of councillors) commencing on June 20th, and then make a decision on that issue prior to hearing evidence on Phase 2 (district boundaries). HRM has already conducted consultations with respect to the number of councillors, and the Board has provided members of the public with the opportunity to make submissions by speaking at the evening session on June 20th (with the option to add another one if necessary) and by making written submissions. Ms. Knight [HRM counsel] undertook to file by Monday, February 28, 2011, a proposed time line for preparing the district boundary evidence, if necessary, as a result of the Board's decision on the first issue. The Board will then reserve dates for a tentative hearing on the polling districts. At the June hearing, the Board will take submissions from the parties and give direction with respect to proceeding to the Phase 2 consultation (if necessary). The Board is aware that the Municipal Clerk's office is interested in having a decision on boundaries in enough time to prepare for the 2012 election.

[Board Letter, February 22, 2011, pp. 1-2]

[10] Following advertisement in the Chronicle Herald, the hearing was conducted at the Board offices on June 20-22, 2011. Mary Ellen Donovan, Q.C., acted as counsel for HRM at the hearing. The Board granted formal standing to Allan Smith and Don Mills, but only Mr. Mills participated at the hearing.

[11] S. Bruce Outhouse, Q.C., and Richard J. Melanson, LL.B., acted as Board Counsel.

[12] Nine persons made presentations to the Board at an evening session held on June 20th.

[13] The Board also received 63 letters of comment from the public.

II EVIDENCE PRESENTED BY HRM

[14] Counsel for HRM called Cathy Mellett, Bruce Fisher and Jack Novack as witnesses on behalf of the Municipality.

[15] There are presently 23 councillors elected from 23 polling districts. The population of HRM according to the 2006 Census is 372,858, up from 359,183 in 2001.

[16] Cathy Mellett is the Municipal Clerk for HRM. She described the process undertaken by HRM leading to the present application.

[17] She testified that Regional Council formed the Governance and District Boundary Review Committee ("Governance Committee") and adopted a two-phase approach for the review:

1. For the Governance Committee to make a recommendation as to the size of Regional Council; and
2. For the Governance Committee to make a recommendation on the setting of specific boundaries.

[18] The guiding principles provided to the Governance Committee by Regional Council on August 4, 2009 were:

- Regional Council be of a size appropriate to decision making of a regional nature; and
- Regional Council be of a size that supports a community council structure appropriate to community decision making.

[19] The Governance Committee first met on October 1, 2009, and continued to meet on average twice a month until it reached its recommendation. The work of the Governance Committee is described in the June 22nd, 2010 report by the Governance Committee to Council:

Thirteen committee meetings have been held to date. During that time, the Committee:

- ▶ gathered information respecting representation in other municipalities in Nova Scotia and across Canada (Binder, Tab 9);
- ▶ surveyed members of Halifax Regional Council (Binder, Tab 7);
- ▶ requested citizen input through an online citizen survey, which received 47 responses, and written submissions through its website at www.halifax.ca/boundaryreview[sic] (Binder, Tab 7); and
- ▶ conducted seven public meetings in conjunction with Community Councils, which had a total attendance of approximately 400 with 72 speakers (Binder, Tab 7).

The Committee also made use of responses to governance questions in the HRM Citizen Survey conducted by Thinkwell (Binder, Tab 7).

[Exhibit H-1(ii), Tab 8, p. 4]

[20] In its application, HRM outlined its view of the results of the various consultations:

- (5) The public consultation process did not reveal an overwhelming desire for change in the size of Regional Council. Written submissions tended to favour a smaller council (generally between 12 and 18), while speakers at the public meetings tended to support maintaining the status quo. There was minimal interest in a shift to a board of governors model with the associated substantial reduction in number of councillors.
- (6) Feedback from both councillors (in their survey) and residents (in the Thinkwell survey and in public meetings) on the role of a councillor in the Halifax Regional Municipality was consistent: councillors are expected to deal with both local community issues and issues that are of importance to the entire region. Councillors are also expected to resolve individual issues residents may have with HRM services. This dual expectation is one reason not to increase the number of voters each councillor represents.
- (7) Halifax Regional Council's debate reflected the sentiment heard in many of the public consultation sessions, that municipal government is the level of government closest to the people and the level of government with which citizens tend to interact the most. Voters value the representation they receive from their councillor, and citizen feedback reflected concerns that a reduction in the number of councillors would lead to constituents having reduced access to their councillors. A number of councillors were concerned that an increase in the number of voters per councillor would bring with it a reduction in representation and in the number of voices being heard.

[Exhibit H-1(i), pp. 4-5]

[21] Following its investigation and deliberation, the Governance Committee made the following recommendations to Regional Council on June 22nd, 2010.

1. Approve the reduction of Regional Council to 20 councillors plus the Mayor, with four community councils each composed of five districts;
2. Seek amendments to the *HRM Charter* that will allow Regional Council to delegate general authority to community councils for local matters, with the intent that the delegation of this authority evolve over time;
3. Approve, in principle, the vesting of authority to community councils for the establishment of area rates for enhanced services deemed by Halifax Regional Council to be local, if the necessary amendments to permit this are made to the *HRM Charter*, and
4. Approve the adoption, in principle, by Regional Council of the use of consent agendas with the goal of achieving greater effectiveness at Regional Council meetings.

[22] With respect to the recommendation on community councils, the Governance Committee cautioned that, while it was recommending that Regional Council seek amendments to the *HRM Charter* to allow delegation to community councils for local matters, the provincial government had not been approached in relation to this issue and Regional Council should not make any decisions on the size of Council solely on the basis that these amendments would be granted and community council powers would be expanded.

[23] Ms. Mellett described the citizen survey that was undertaken by Thinkwell Research, a polling company engaged by HRM. An invitation to participate in the survey was sent to 24,000 random households throughout the region, asking for an adult over age eighteen, whose birthday was the closest to the date that they receive the survey, to fill it out. While there were several hundred questions in the survey, there were a number of governance questions. Ms. Mellett reported that the survey responses were fairly high, as 2,420 surveys were completed.

[24] Ms. Mellett also indicated that HRM has nine Canadian municipalities it uses as comparators for things such as councillor salaries and other purposes. Representation in those municipalities was reviewed.

[25] On cross-examination by Mr. Mills, Ms. Mellett confirmed that the comparator cities in Canada are Brampton, Calgary, Edmonton, Hamilton, Laval, London, Mississauga, Ottawa and Surrey. She agreed with Mr. Mills that of the comparator cities, HRM has the lowest number of citizens per councillor. She did, however, state that, in her view, each municipality has a unique set of circumstances, history, geography and citizen expectations that should be taken into account in determining Council size.

[26] On cross-examination by Board Counsel, she confirmed that, while there are various scenarios that might be used to determine the size of Council, including a Board of Governors scenario, that scenario, which would significantly have reduced Council, was never put to the public. She also confirmed, in cross-examination by Board Counsel, that if one were to accept the recommendation of four community councils made up of five councillors, that the option of 23 councillors would not work.

[27] As noted in the application, one of the reasons given for the status quo was concern by councillors that the reduced number of councillors would lead to constituents having reduced access. Several councillors at the evening sessions spoke to the large number of calls they receive from citizens asking them to resolve matters.

[28] In response to an undertaking, Ms. Mellett was asked to provide information concerning the total number of calls received by HRM's call centre, which is set up to respond to citizen concerns on issues such as transportation and public works, police, etc. The statistics show that between January 1, 2008 and December 31, 2008, the 490-4000 help line received a total of 577,825 calls; for the following year, January 1, 2009 to December 31, 2009, it received 558,184 calls; for January 1, 2010 to December 31, 2010 there were 530,726 calls. In the 2009 year, the statistics showed that 99.93% of the issues subject to the calls were resolved; in 2010 99.60% of the issues subject to the calls were resolved.

[29] Finally, under questioning from the Board, Ms. Mellett conceded that the written record in support of the application supported a council size of 20, not 23:

Q. ...So is it your view of the record that you've gone through this morning that it's supportive of that committee recommendation of 20?

A. It would be my view that it was supportive of the committee recommendation.

Q. Okay.

A. That was not the decision of council.

Q. I realize that and that's my next question. Is there anything in the record that you can point me to that tells me that 23 is a better number than 20, based on the record that you've taken us through this morning?

A. Not outside of council's decision on that ---

Q. I understand the position you're in. The committee made a recommendation of 20 and council, for whatever reason, chose not to follow that recommendation. But dealing with the record before us that you're familiar with and that you've taken us through, is there anything in it that you can point me to that would suggest that 23 is a better number than 20?

A. No, there is not.

[Transcript, pp. 183-185]

[30] Regional Council considered the Governance Committee report at its council meeting of August 3rd, 2010. Ms. Mellett indicated, politely, that having sat through quite a few Council debates over the years she would describe this one as a vigorous and informed debate, lasting three hours. During the course of the meeting, a motion to approve the Governance Committee's report, without debate or discussion, was defeated; a motion to reduce the size of Council to 16 councillors, plus the Mayor, was defeated; a motion to reduce the size of Council to 18 councillors was defeated; a motion, after debate, to approve the Governance Committee's recommendation of 20 councillors, plus the Mayor, was defeated. In the end, Regional Council approved a motion to recommend that the status quo of 23 councillors, plus the Mayor, be maintained.

[31] Bruce Fisher is the Acting Chief Financial Officer for HRM. He testified about the potential cost savings resulting from a smaller council. He stated that the cost savings would be relatively insignificant when considered in the context of its impact on the tax rate.

[32] Mr. Novack is a Professor of municipal administration and management at Dalhousie University. He has worked in various regions internationally on the issue of

local government. He was qualified to testify as an expert able to provide opinion evidence on municipal governance.

[33] His pre-filed evidence defined the essence of governing as being the resolution of conflicting interests through a political process. In his view it is important to first define the role, or function, of local government and what it means in the lives of citizens. After this is defined, then the form, including the number of councillors, of that government can be determined.

[34] Mr. Novack is a strong proponent of public consultation, referring to it as an "essential element" of local government. His vision is that this should be done partially as an education process along with informed conversation. In this way the community's interests can be identified, including:

... where they converge and where they diverge, how do we foster constructive community engagement, how do we promote a learning community and how do we encourage dialogue, compromise and accommodation? ...

[Exhibit H-17, p. 4]

[35] Mr. Novack defines the role of a councillor as follows:

... The first is to advocate on behalf of their districts. Here they bring forward issues which are of a district nature and often for which they have been elected and will be held accountable. The second is they advocate for individuals. Sometimes this is intended to bring forward a proposition and more often it is a result of someone feeling aggrieved by the bureaucracy and having turned to their councillor for help. The third area is to engage in overall policy development for the betterment of the municipality. ...

[Exhibit H-17, p. 12]

[36] He expanded on the role in his testimony:

But the important thing that councillors have to do is somehow they have to be in tune with and reflect local values. ...

I think as well too that part of the role of politician is to help create a learning community.

... By my views, that councillors need to be very sensitive to all the disparate interests which reside in the municipality and to ensure that all of them, irrespective of their capacity to articulate and advance them, are heard and brought to the deliberative forum we call council for resolution.

[Transcript, June 20, 2011, pp. 212-216]

[37] The problem, in his view, is that Council does not spend as much time on policy as it should. He has observed that the advocacy and ombudsman role "... tend to crowd out the policy role. ...". He is concerned that some may think council, as it is now, is dysfunctional; however, he sees it as signs of a "...healthy expression of local democracy...":

Critical observers wrongly assume that the inability of council to identify and embrace a vision is the product of the number of councillors rather than the system under which the council operates.

[Exhibit H-17, p. 13]

[38] He would like to see a council of an appropriate size that would allow residents reasonable access to a councillor. This size should also be sufficient to bring a diversity of views to the meetings:

...There must be some obvious limits but the municipal council should be, to the degree possible, a microcosm of the broader municipality.

[Exhibit H-17, p. 12]

[39] He is concerned that a small council may not reflect the diversity of views and could change the role of council:

The tendency towards reducing the size of councils reflects the position of local government as a service delivery agent or administrative unit rather than of its representative of political role.

[Exhibit H-17, p. 10]

[40] Nevertheless there could be a problem with too much diversity, which would indicate an upper limit on council size:

I think the diversity of the Municipality is one that works against it. If the community councils had more autonomy and we're dealing local concerns, and if regional council was able to deal with strategic interests, I think that would help them come to grips with those kinds of things.

[Transcript, June 20, 2011, p. 233]

[41] Mr. Novack did not take any position whatsoever with respect to the preferred size for HRM's Regional Council. However, he did caution the Board to avoid changing the size of council, under the guise of more efficient and effective decision making, without a proper consideration of other issues that may be negatively impacting HRM. He intimated that the problems faced by HRM may be more directly related to the unique size and diversity of the Regional Municipality (i.e., including its dual urban and rural nature):

However, changing internal decision making structures and embracing enlightened decision making processes will ultimately not be enough. The real question is: is HRM, with its great size and diversity, really a local government? Is there a sufficient common community of interest that would enable the council to capture, present, embrace and defend a coherent vision? A reduction in the number of councillors may be the answer but only if it is as a result of significant changes in the political boundaries of HRM which recognizes the unique features and indeed the unique role of the urban area that resides within the HRM. Or put another way the current debate regarding a reduction in the number of councillors is a distraction from the more important underlying issue.

Notwithstanding, over the past 16 years since amalgamation, HRM councillors have tried to make amalgamation work by making decisions that balanced the array of divergent interests that naturally reside within this political entity. This is a large and difficult challenge given the size and complexity of HRM. Assuming that these difficulties can be addressed and overcome simply by an arbitrary reduction in the number of councillors is to unnecessarily simplify the nature of the debate.

[Exhibit H-17, p. 14]

[42] Mr. Novack was asked by Mr. Mills and by Board Counsel for a recommendation as to the size of Council, including the maintenance of the status quo. This is particularly relevant in defining his view on an ideal size of council to fulfill his view of local governance. In essence, his stock answer was that he had not done any research or study to support any particular number. As well he is, in general, in favour of the community council concept, but did not provide any details as to how they could be improved or made more relevant.

III EVIDENCE PRESENTED BY THE FORMAL INTERVENORS

[43] Don Mills is an interested citizen who testified that he is concerned about the proper functioning of HRM's Regional Council. He believes a council of 14 is appropriate for HRM.

[44] Mr. Mills explained how he became concerned with the governance of HRM:

And I became very concerned that we were not talking about the right things and not -- more importantly, we were not achieving what we need to achieve given the opportunity and the strengths of what we have in Halifax, and it became very concerning to me personally.

And I recognized, I think at that point, sometime in 2004 I believe, that we had a governance issue problem that if we didn't fix it we would have great difficulty achieving what we had as potential in our community.

[Transcript, June 21, 2011, pp. 425-426]

[45] He is also President of Corporate Research Associates, a public opinion and market research firm. He has been qualified by the Board in other proceedings and in this matter he was qualified to testify as an expert able to provide opinion evidence on public opinion research.

[46] Mr. Mills started polling HRM residents in August 2010 about their views on council size. This timing was coincident with Council's decision to make the application to the Board to retain the status quo of 23 councillors. In his view, the polling results show that a vast majority of HRM residents desire a reduced council size.

[47] First, since November 2010, about 70% of respondents across HRM oppose Regional Council's decision to maintain the status quo of 23 councillors. The responses were also presented by region, with the following results as of May 2011: 63% opposed (Halifax), 71% opposed (Dartmouth), 69% opposed (Bedford/Sackville)

and 79% opposed in the remainder of HRM. He noted that residents in the former County are those most opposed to Council's decision to maintain the status quo.

[48] Then, Mr. Mills asked residents about their preference for the size of Regional Council. As of May 2011, 82% of respondents favoured a reduction below the status quo of 23 councillors. Only 6% desired to retain the status quo, 1% wanted an increase in council size, and 11% were undecided.

[49] Removing the undecided, 92% of respondents wanted fewer than the status quo, with the most common responses being: 9-10 councillors (16%), 11-12 councillors (23%) and 15-16 councillors (21%). No other response received higher than 9%. Further, 77% of respondents favoured a reduction to 16 councillors or less.

[50] In response to their preference of the desired council size, the mean number given consistently since November 2010 was 14 councillors.

[51] Moreover, the polling results demonstrate that the public's views have not wavered over time in terms of their level of support for a reduction in council size, and the desired magnitude of the reduction.

[52] Mr. Mills noted that even HRM's online survey prepared by Thinkwell Research, which he described as having no statistical reliability, showed 74% wanted a smaller council.

[53] He also presented a comparison of HRM's population and council size with that in other similar sized urban centres across Canada ("comparator cities"), notably the same cities used by HRM in determining remuneration for its councillors. He noted that the average ratio of population to councillors is roughly double in the comparator cities (i.e., an average of about 38,500 per councillor across Canada compared to 16,200 in HRM).

[54] He noted that the average number of councillors for these eight comparator cities (including HRM's 23 districts in the calculation) is 14.5 councillors.

[55] Mr. Mills also called Allan Robertson as a witness. He is a retired Professional Engineer and management consultant who has worked internationally, notably in respect to developing regional development plans on behalf of the Canadian International Development Agency ("CIDA").

[56] Like Mr. Mills, his involvement in this proceeding was as a private citizen. He is frustrated with what he considers to be a Regional Council that focuses on district-oriented matters and fails to address important strategic issues affecting HRM.

[57] Mr. Robertson conducted a comparison of HRM Council's size with the size of municipal councils in other large urban centres across Canada. He considered groups of the largest 32, 20 and 8 urban centres in the country. He also conducted regression analysis and graphed the results in his presentation filed with the Board and reviewed in his testimony.

[58] His analysis showed, in his opinion, that the number of councillors in HRM should be about 14 or 15.

[59] In cross-examination, Mr. Robertson was asked by Ms. Donovan about the impact on councillors' workload if council size is reduced, considering that the councillors receive more questions from residents on service type matters than on the strategic issues facing HRM:

Well, as a management consultant I would twist that around and say, "Why are people accepting 100 telephone calls a day," as one of the councillors mentioned last night. That's ludicrous for a representative of goodness knows how many thousand people, to accept 100 emails or telephone calls.

I mean, it's just -- it shows, to me, that somebody should provide some assistance in terms of managing their time and their effectiveness and that -- if that level of responsiveness pervades all of council then all the council will spend most of its time on the issues dealing with direct representation and not on the broader strategic issues.

...
...we need a paradigm shift; we have to haul ourselves kicking and screaming into the 21st century.

[Transcript, June 21, 2011, pp. 408-409]

IV EVIDENCE PRESENTED BY THE BOARD CONSULTANT

[60] Board Counsel retained Dr. Robert J. Williams to provide evidence in this matter. He was qualified to testify as an expert able to provide opinion evidence on municipal electoral systems and principles related to the establishment of municipal boundaries.

[61] Dr. Williams prepared a report in relation to HRM's Boundary Review Application (the "Williams Report"). His report started with a summary of past Board Decisions, the work of the Nova Scotia Electoral Boundaries Commission, and the following quote from Madame Justice McLachlin (as she then was):

... Representation comprehends the idea of having a voice in the deliberations of government as well as the idea of the right to bring one's grievances and concerns to the attention of one's government representative; as noted in *Dixon v. B.C. (A.G.)*, [1989] 4 W.W.R. 393, at p. 413, elected representatives function in two roles -- legislative and what has been termed the "ombudsman role". (p. 32)

[Excerpt from the "Carter" decision, Exhibit H-11, pp. 12-13]

[62] He then reviewed the work and process of the Governance Committee. In essence HRM Council had a "hands-on" approach to the review with no members of the public on it. They also did not deem it necessary to engage an outside consultant. Dr. Williams had problems with both of these approaches, even when staff had recommended to Council that they strike "...an independent Advisory Committee..." and "...at no less than four places..." expressed the desirability of hiring an expert. As he stated:

In this review, HRM Council retained complete control over the process by assigning the review to a committee of its own members. This approach presupposes that elected officials have a good sense of what the job of being a councillor entails and that such a

perspective is integral to examining the municipality's governance structure. However, it is difficult to believe that a Council committee can successfully step far enough back from the status quo to contemplate real innovation or that Council itself can be dispassionate on the core question of how many places will be around the Council table after the next election. Justification for conducting the review in this fashion is not incorporated into the application.

[Exhibit H-11, pp. 22-23]

[63] In his review of the work of the Governance Committee, Dr. Williams concluded:

The present system of governance in HRM has not been evaluated systematically in this review; nor have viable alternatives has been appraised. The application to the Board from Halifax Regional Municipality has not been constructed on the foundation of "a comprehensive review of the number and boundaries of polling districts."

[Exhibit H-11, p. 29]

[64] In his review of the minutes, Dr. Williams noted:

... It is therefore difficult to conclude from the minutes that the Committee undertook a "comprehensive review" to generate its recommendations on a "governance structure."

[Exhibit H-11, p. 24]

[65] Ideally, Dr. Williams would have liked the consultations to have been partially an education process. The presentations made at the public meetings did not deliver adequate background. As he stated:

Q. ... are these questions adequate or do they go far enough to try and get at that governance role?

A. Well, I did go through the PowerPoint presentation that was distributed with this material and my answer would probably be no, it doesn't because people are still working with a very small base of knowledge.

...

Q. So you're really supportive of what Professor Novack was saying yesterday that there should be a learning -- used as a learning approach to try and educate people so they get a more educated opinion or view or ---

Q. Yeah, I certainly believe that. ...

[Transcript, June 21, 2011, pp. 534-535]

[66] The governance model that was prescribed to the public was predicated on the continuation of community councils. As Dr. Williams noted:

... both supporters and opponents of a smaller council seem to agree that Regional Council needs to be, first and foremost, large enough "to support a Community Council structure."

[Exhibit H-11, p. 27]

[67] The recent restructuring, where Regional Council has moved away from a Committee of the Whole concept and how that ties into community councils, was not evaluated. His view was that a proper comprehensive review would have looked at how they would work together. He also did not find any evidence to support the Governance Committee's conclusion that there was no interest in the "board of governors model".

[68] Dr. Williams assessment of the public consultation was:

... People may have opinions – sometimes strongly held opinions – on the number of elected officials but seldom can members of the general public provide a reasonable appreciation of the governance system without clear information, background and time to consider alternatives. Such elements were in short supply in the HRM Phase One public consultations; rather than "a comprehensive review" of appropriate alternatives, the review solicited spontaneous responses from amateur adjudicators.

[Exhibit H-11, p. 25]

[69] Dr. Williams found that the work of the committee did not ask the appropriate questions to encourage the uncovering of information, prompt discussion and allow for thoughtful retrospection on how Regional Council should work. Such an analysis, even if partially done, would have achieved the purposes of s. 369 of the *Act*.

The review committee's report did not look at complementary initiatives to make the present structure work better both as a decision-making body and as a representative institution. Nor did the review demonstrate how a smaller council can better achieve these two objectives. For example, the capacity of an elected council - larger or smaller - to give residents "a voice in the deliberations of government" through "more effective methods of garnering and considering the input of residents" ... is not incorporated into the application at all.

[Exhibit H-11, pp. 26-27]

[70] In essence, no study was performed, as he stated:

... but I certainly think that a study that is purported to be -- provide insight into how to make the council effective, didn't give much thought to any other alternatives, except the current practice.

[Transcript, June 21, 2011, p. 519]

[71] Dr. Williams stated that if he were asked to conduct a study he would have incorporated, as a start, the five questions asked by the UK Electoral Commission.

- 1) Roles and responsibilities of the councillor.
- 2) Allocation of councillor time.
- 3) Council size and efficiency and effectiveness.
- 4) Council characteristics.
- 5) Members per ward and councillor workload.

[72] A literature search¹ found the first two questions were adequately covered in the literature, while the third and fifth have peripheral research, but not directly related to the question asked by the Commission. The fourth was found to be very poorly researched. Of most interest would be the role of a councillor:

... You've got to do all kinds of things. And to be able to step back and say, "What should my role really be?" That's usually -- you usually need someone outside to do that. And to me what's missing, even though the invitation was made very clearly to both HRM and CBRM to step back and do that, they didn't do that and I found that a bit frustrating that, you know, the hints were there but they didn't take that up.

[Transcript, June 21, 2011, p. 529]

¹ Copus, Colin, Alison Crow and Alistair Clark. (2005) Council Size: Literature Review and Analysis: Report to the Electoral Commission. Institute of Local Government Studies, School of Public Policy, University of Birmingham [Exhibit H-11, p. 41]
Document: 192287

[73] Dr. Williams reviewed the experience with amalgamations stating:

... One of the hallmarks of amalgamated municipalities is a sharp reduction in the number of elected officials in the new unit; one of the less noticeable characteristics is the tendency to tolerate patterns of representation - at least at the outset - that accommodate the pre-amalgamation units in some way. In other words, many newly-amalgamated municipal councils are frequently larger than councils in municipalities of similar population or area that have not been spliced together from existing municipalities since there is an implicit sympathy (if not political prudence) for providing recognition to those about-to-be-defunct municipalities. Basically, the size of the council is often pegged at a number that is the result of its "birth process."

[Exhibit H-11, p. 31]

[74] When Regional Council dealt with its size, Dr. Williams commented it defaulted to the status quo:

The status quo is the default "solution."

However, endorsing the status quo is an option, as much as would be a decision to elect councils of 12, 16, 20, 24 or any other number. The status quo therefore also requires a rationale. As Sir Winston Churchill is said to have observed: "If you simply take up the attitude of defending [the status quo] there will be no hope of improvement." The Board has been left with representations based on argument rather than evidence, on opinion rather than information.

[Exhibit H-11, pp. 33-34]

[75] The evidence from others included public opinion polls and mathematical analysis of council size in other municipalities. Dr. Williams commented upon public opinion as follows:

I'm on the record here. I would have to say it is only one of a number of factors and it is a factor that needs to be treated with great caution. ...

But my concern is that public opinion or public consultation without adequate education is not a terribly insightful tool to use in this exercise, ... I suspect that at the public meetings that were conducted in HRM, the opportunity to do that was simply not provided in a way that would allow us to say with confidence that the people who were there provided an insightful evaluation. They provided a kind of reaction but I'm not sure that it was helpful.

...

So yes, it's one tool. It's one insight but it's not, to me, something that should trump a careful examination of the way that the system now works and what flaws have been identified.

[Transcript, June 21, 2011, pp. 523-525]

[76] With respect to the use of "comparator cities", Dr. Williams commented:

I think the comparator is insightful if it's seen as part of what I suggested earlier, other places can make it work. So we shouldn't be afraid of an elevation in numbers in and of itself. It's partly to do with how the councillors are engaged in the work they do and this is going to vary. It will vary by individual, it will vary by district.

[Transcript, June 21, 2011, p. 552]

[77] In determining a size of council, Dr. Williams considered three elements: the capacity of the council to provide effective political management, effective representation, and accountability. For the first element, he elaborated as follows:

Research in social psychology hypothesizes that size is a significant factor in influencing the "quality" of decision-making since, in general, there is a trade-off between efficiency (more likely in smaller bodies) and full availability of alternatives (more likely in larger ones).

An application in support of a regional council of a specific size should articulate the governance style the council itself wishes to practice and should provide consistent or conclusive research evidence in support of the appropriateness of that model to the municipality and to a council of a certain size. ... How much material must councillors review and understand before participating in council decision-making? How much casework is directed to councillors?

[Exhibit H-11, p. 36]

[78] This was not addressed in the application, as Dr. Williams elaborated:

If you're going to talk about how well the system works, and that's where you start; you've got 23, does it still work. Is it still sustainable or do we go elsewhere, you need to collect that information in some -- ideally, some verifiable fashion over a period of time to be able to say. As we heard from several councillors, "I'm run off my feet. I can't handle anymore. It would be terrible," and others saying, "Oh yeah, sure." Or the Chamber and others saying, "Oh yeah, we can easily drop seven or eight people and it wouldn't affect workload." I don't know who to believe because I don't have evidence.

[Transcript, June 21, 2011, p. 532]

[79] Dr. Williams commented upon the uniqueness of Halifax as being one of a small number of municipalities that have geographically large districts as part of council:

... there is simply this physical size and the large -- you know, this rather astonishing geographic size that is still part of a municipality and that needs to be accommodated within the boundaries of the polling districts. ...

[Transcript, June 21, 2011, p. 556]

[80] In his opinion, this has a bearing on effective representation:

... councillors representing rural areas still face additional challenges that need to be addressed in an application in a way that acknowledges a commitment to "effective representation" for all residents.

[Exhibit H-11, p. 37]

[81] He suggested that a way to deal with this maybe to change the order for boundary analysis:

Start with rural. How many seats should that be and what should they look like? And once you've got that settled, then you could move on from there. ...

[Transcript, June 21, 2011, p. 557]

[82] He observed that some newer technologies could further involve the citizens and help with accountability:

... that there are opportunities there for the Municipality to be engaged with citizens, some of whom would come through this method, some would still have to rely on traditional modes of interaction. And, again, that's part of my reference to accountability. You know, what has the Municipality done as an organization to keep this kind of interaction going with citizens along the way? You know, do -- are community council meetings the only things that happen out there in Upper Musquodoboit or in Hubbards or wherever? ...

[Transcript, June 21, 2011, p. 563]

[83] Dr. Williams, when reviewing the size of council concluded:

While not condoning the failure of the review process to conduct a proper review of governance in HRM, it is possible to concur that a 20-member council as envisioned by the Governance and District Boundary Review Committee could satisfactorily fulfill many of the principles proposed here.

[Exhibit H-11, p. 39]

[84] In support of his conclusion, he stated it was influenced by a "do no harm" test:

I would suggest that it's reasonably high. It's reasonably high. It had had -- it had been road tested a couple of times. And while there was disagreement about its appropriateness, it at least had had some degree of visibility and evaluation, and to me, as I said earlier, I wasn't engaged to start from scratch and sort of build up to a number.

[Transcript, June 21, 2011, p. 579]

[85] He did acknowledge that people do eventually learn to live with smaller councils; however, he could not make a determination about 16 councillors as he did not have any evidence:

Q. ... if I understand your answer was that because this type of work had not been done true governance, you have nothing to base on to determine any other number.

A. In so many words, yes. And because I didn't -- I wasn't asked by the Board to go out and do that, I could -- you know, if it were up to me I suppose we might have come up with another number because if we follow this process. But I have to work with what was there on the record. There was a study done. It offered some suggestions, 20 was what it came up with. ...

[Transcript, June 21, 2011, p. 538]

Q. Okay, thank you. So there's no reason -- you have no evidence or anything to suggest that that number would not work?

A. I don't think anyone has that evidence.

[Transcript, June 21, 2011, p. 585]

[86] He expressed a concern about too dramatic a change:

...You're talking about an ongoing life of a council where there's things happening all the time, where they could be related to development or whatever it is, but to suddenly chop nearly a third out at once, I suggest, would create perhaps a much more difficult transition than is necessary.

...And as I said, to jump from 23 to 16, whatever, in one go is, I think, inviting consequences that really haven't been thought through.

[Transcript, June 2, 2011, pp. 520-521]

V PRESENTATIONS - EVENING SESSION AND LETTERS OF COMMENT

[87] This hearing attracted significant interest as measured by the number of letters of comment and the participation at the evening session.

[88] Nine speakers made presentations to the Board at the evening session, including Tim Outhit, HRM Councillor - District #21 (Bedford); Debbie Hum, HRM Councillor - District #16 (Rockingham-Wentworth); Captain Earle Wagner; J. Colin May, former councillor on Dartmouth City Council; Paula Minnikin, representing Citizens For

Halifax; Valerie Payn, President and CEO, Halifax Chamber of Commerce, having 1,500 member businesses; HRM Mayor Peter Kelly; Linda Mosher, HRM Councillor - District #17 (Purcell's Cove-Armdale); and Jacob Ritchie, Director of the Sustainability Action Team For Fusion Halifax, a group of young professionals under 40 with 2,500 members who want to engage with HRM on a volunteer basis to address issues affecting the community.

[89] In addition to other issues related to the process, Councillor Outhit stated that during his involvement on the Governance Committee, the Committee decided not to accept polling data, such as that compiled by Mr. Mills, for use in the Committee's deliberations. Accordingly, he believed useful evidence was ignored in the consultation process.

[90] Mayor Kelly supports a reduction of the council size to 16 (plus the Mayor). He noted that there is strong public support for a smaller Regional Council. In his view, a smaller council size would lead to "efficiency, manageability and good governance", while remaining "responsive to residents' expectations". He concluded:

... A smaller council should improve our effectiveness and efficiencies without limiting public accessibility or debate".

[Transcript, June 20, 2011, p. 358]

[91] Councillor Mosher has been a councillor for 11 years. She indicated that HRM needs:

... an appropriately sized council so we can maintain strong links and relationships with our residents and our communities.

[Transcript, June 20, 2011, p. 364]

[92] In her view, in order for councillors to fulfill their policy making role, they must be in contact with the community so they can understand the issues. She added that the objective of the exercise should not simply be about council size. Rather, she

submits that the goal should be to develop “the most effective municipal representation for all citizens...”. She said that the “root cause” of the problems with Regional Council’s performance and effectiveness is the structure of the Council meetings and the composition of the agenda, not the size of Regional Council. She asserted that many of the local issues dealt with at Regional Council should be handled by community councils having expanded powers.

[93] Councillor Mosher did support reducing council size to 20 councillors. However, she has concerns that significantly reducing council size will negatively impact the accessibility of residents to their councillors and impose a marked increase on the councillors’ workload.

[94] The Board also received significant interest from the public in the form of letters of comment. All but four of the 63 letters received by the Board favoured a reduction in council size. The comments in support of a smaller Regional Council included:

A smaller council would lead to a more effective and efficient council. The present council has too many competing agendas which do not serve HRM.

[Exhibit H-19, letter of Shirley Gilbert]

Every city is unique and I recognize that the geographic size of HRM creates challenges in establishing an effective governance structure. However I believe that a smaller council would provide more effective governance to the residents of HRM. A smaller council would reduce the cost of council and add efficiency to the delivery of services in HRM. A smaller council would achieve more nimble decision-making.

[Exhibit H-19, letter of Richard Withington]

Its [Council] size is not bringing increased service to citizens, but less. Beyond that, it is difficult for such a large group to have clear vision for HRM, leading to bickering and floundering, with negative consequences for the future of the municipality.

[Exhibit H-19, letter of Peter Fillmore]

The council of 23 members and mayor is too big and unwieldy for effective decision making and does not provide good critical reviews of large expenditures.

[Exhibit H-19, letter of Captain Earle Wagner]

[95] Moreover, many of the letters in support of a smaller council favoured a significant reduction in the number of councillors, instead of a more modest change.

VI ANALYSIS AND FINDINGS

a) Statutory provisions and case authorities

[96] With respect to municipal boundary reviews, s. 364 of the *HRM Charter* provides:

Municipal Government Act provisions apply

364 Part XVI of the Municipal Government Act applies to the Municipality.

[97] Section 368(4) of the *Municipal Government Act* sets out the criteria for the Board to consider as follows:

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.

[98] As noted earlier in this Decision, the initial phase of this proceeding is limited to determining the number of councillors and polling districts.

[99] In its previous decisions, the Board has provided specific guidance to HRM and other municipalities with respect to such applications:

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...

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.

[2004 NSUARB 11]

[100] The above excerpt was cited by HRM staff in its August 2009 Staff Recommendation Report to Regional Council respecting the initiation of the district boundary review process.

b) Public consultation

[101] The Board has previously recognized the role of councillors in its prior decisions. The Board is mindful that this role includes both a policy making role and a representative role for constituents.

[102] Ultimately, the governance model to be used by HRM is one to be developed by Regional Council and its staff. Council size undoubtedly has an impact on the governance model adopted by a municipality. However, Dr. Williams and Mr. Novack stressed that the governance issues related to local government are important matters to be canvassed during public consultation.

[103] As noted earlier in this Decision, Mr. Novack acknowledged on questioning by the Board that proper public consultation is a fundamental part of local government:

Q. Is it fair to say that public consultation is really an important element of local government?

A. I think it's an essential element.

[Transcript, June 20, 2011, p. 285]

[104] While HRM made several attempts to engage the public in the form of public meetings and the Thinkwell Research survey, those efforts did not, in the view of the Board, meet the standards identified by Dr. Williams or, for that matter, those of Mr. Novack. There were problems with the public consultation process in several respects.

[105] First, the Board considers that when the Governance Committee did not investigate any scenarios dealing with fewer than 15 member councils, it effectively removed from the public consultation process any discussion about the possible advantages of governance models of councils having as low as 8 or 10 councillors. This omission carried forward into Council's debate of the issue, which never considered those possible models.

[106] Second, the Governance Committee process was similarly flawed when it refused to consider public opinion polling results in its deliberations, as noted by Councillor Outhit at the hearing. The Board considers it curious that the specific wishes of the electors on council size were not sought; indeed, their views were not even welcomed, in determining what would best serve those very electors. On this, of any issue, the public's views would surely be relevant.

[107] Third, when the Governance Committee chose to conduct a survey of its own, and commissioned Thinkwell Research to do so, it never asked respondents their specific view on their preferred size of Regional Council.

[108] Fourth, while a municipality is not obliged to appoint citizens to its committees, reviewing the appropriate council size or the polling district boundaries, this

is certainly one method of engaging the public in the process. HRM has used this approach in the past. In this case, it did not.

[109] In light of HRM's decision to refrain from directly asking residents their opinion on their preferred council size, and to remove from the discussion any scenarios for councils less than 15 members, it may have been prudent to involve some of its citizens in the discussion surrounding council size, and how it would impact governance.

[110] Fifth, the Governance Committee considered it had enough experience with governance that it did not find it was necessary to engage an expert. No valid study was made on how different sized councils would impact the governance and the decision making process of the Municipality. In the absence of doing the study themselves, HRM might have considered seeking assistance.

[111] While the Board is mindful that HRM adopted a means of public consultation similar to that used by HRM for other municipal issues (i.e., public meetings), the Board concludes that it effectively removed the relevant question from the discussion by its residents, i.e., the council size appropriate for HRM.

[112] The Board has concluded that HRM did not do an appropriate study on governance, as directed in the Board's Decision, [2004] NSUARB 11. In a future application, HRM should consider the observations and comments of Mr. Novack and Dr. Williams on performing such a study and do a more comprehensive public consultation.

c) Comparisons with other municipalities

[113] There was a great deal of evidence at the hearing about the utility of comparisons with other urban centres across Canada in determining the appropriate number of councillors for HRM.

[114] Mr. Mills and Mr. Robertson presented evidence about the population and council size of cities and urban municipalities across Canada. In their view, this evidence demonstrates that HRM's council size is too large, with the average across Canada being in the range of 14 to 15.

[115] Further, Mr. Mills highlighted that the average ratio of population to councillors is roughly double in the comparator cities (i.e., an average of about 38,500 per councillor across Canada compared to 16,200 in HRM).

[116] In his testimony, Mr. Mills referred the Board to the following comparison of HRM's council size with the council size of the seven other Canadian cities which he says were used by HRM during its review of councillor remuneration:

TABLE 1 Comparison – HRM Remuneration			
City	Population	Councillors per capita	Council Size (Excluding Mayor)
Winnipeg	633,451	42,230	15
Vancouver	578,041	57,809	10
Hamilton	504,559	33,637	15
HRM	372,679	16,203	23
Surrey	394,976	49,372	8
Laval	368,709	17,557	21
London	352,395	25,170	14
Brampton	433,806	43,380	10
Total	3,638,616	38,450	14.5

[Exhibit H-24]

[117] Mr. Mills submits that these comparators should apply equally to assessing council size.

[118] As noted earlier, Mr. Robertson submitted comparisons for the largest 32, 20 and 8 urban centres across Canada. His sample of 8 cities is identical to that of Mr. Mills.

[119] Mr. Robertson's 20 city sample size is compiled in the following table:

Population and Size of Council - 20 Cities			
Prov	City	Population	Council Size
ON	Toronto	2,503,281	44
QC	Montreal	1,620,693	45
AB	Calgary	988,193	14
ON	Ottawa	812,129	21
AB	Edmonton	730,372	12
ON	Mississauga	668,549	9
MB	Winnipeg	633,451	15
BC	Vancouver	578,041	10
ON	Hamilton	504,559	15
QC	Quebec	491,142	27
ON	Brampton	433,806	10

BC	Surrey	394,976	8
NS	Halifax	372,679	23
QC	Laval	368,709	21
ON	London	362,395	14
ON	Markham	261,573	12
ON	Vaughan	238,866	8
QC	Gatineau	242,124	18
QC	Longueuil	229,330	26
ON	Windsor	216,473	10
Average		632,067	18
Median		462,474	15

(Populations from Statistics Canada, 2006 Census)

[Exhibit H-26, p. 5]

[120] After excluding Toronto, Montreal and Halifax from the above table (Halifax being excluded because it is the target of the analysis), Mr. Robertson concluded that HRM should have approximately 15 councillors.

[121] Dr. Williams achieved substantially similar results in his analysis of the 20 largest municipalities by population (i.e., compiling the same list of 20 as Mr. Robertson): see Exhibit H-14, Information Request IR-4.

[122] The Board considers comparisons to other Nova Scotian municipalities to be of little benefit because of the vast difference in HRM's population with that of the other municipalities in the province.

[123] The Board is mindful of the comments of Dr. Williams, who cautioned the Board to avoid placing too much reliance on comparisons of council sizes in other jurisdictions, stating that council sizes in other municipalities may be affected by factors specifically related to those municipalities and their provinces.

[124] While the Board recognizes that it must weigh all the evidence that is presented in an application, it considers that such comparisons may help shed some light on the issues in this proceeding. Council sizes in comparator cities, and more specifically the number of electors per councillor (which the Board considers, for the purposes of the comparisons in this Decision, to be substantially similar to the ratio of population per councillor), provide useful benchmarks by which to assess the size of Regional Council. If, as in the present case, the ratio of electors per councillor trends at the extreme low end of all other cities, then it is appropriate to question the efficiency of HRM's Regional Council. In this instance, most, if not all, other cities govern their affairs with a much higher ratio of electors per councillor.

[125] Further, the Board considers it appropriate to consider the comparisons to council size and the ratio of electors per elected representative, when HRM, itself, uses such comparisons with these same cities in order to determine councillor remuneration and other matters.

[126] The Board notes that s. 368(4) of the *Act* specifically directs the Board to consider the number of electors in determining the number of councillors and polling districts.

[127] Having reviewed the evidence on this point, the Board accepts the evidence of Mr. Mills and Mr. Robertson that, when compared to comparator cities across Canada, HRM has a larger council size and a much lower number of electors per councillor.

[128] Based on its review of the comparisons with other large urban municipalities across Canada, the Board concludes that this is a factor which may warrant a reduction of council size.

d) Regional and unique character of HRM

[129] A number of witnesses suggested that HRM has a unique character that affects its governance structure. It was noted that the Regional Municipality has a very large geographic size.

[130] Mr. Novack, as noted earlier in this Decision, suggested that the issue of council size may be unrelated to the problems facing HRM:

...The real question is: is HRM, with its great size and diversity, really a local government? Is there a sufficient common community of interest that would enable the council to capture, present, embrace and defend a coherent vision? A reduction in the number of councillors may be the answer but only if it is as a result of significant changes in the political boundaries of HRM which recognizes the unique features and indeed the unique role of the urban area that resides within the HRM. Or put another way the current debate regarding a reduction in the number of councillors is a distraction from the more important underlying issue.

Notwithstanding, over the past 16 years since amalgamation, HRM councillors have tried to make amalgamation work by making decisions that balanced the array of divergent interests that naturally reside within this political entity. This is a large and difficult challenge given the size and complexity of HRM. Assuming that these difficulties can be addressed and overcome simply by an arbitrary reduction in the number of councillors is to unnecessarily simplify the nature of the debate.

[Exhibit H-17, p. 14]

[131] On the issue of HRM's large geographic size and its unique urban/rural nature, Dr. Williams did not believe this is an impediment to reducing the council size.

He suggested that an approach would be to start by carving out the large rural regions, and ensure they are represented, before looking at the areas of denser population.

[132] The Board notes that s. 368(4) of the *Act* specifically directs the Board as follows:

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.

[133] Thus, the issue of geographic size, in addition to the other factors, is clearly a relevant point for the Board to consider. In this proceeding, HRM's geographic size, with large sparsely populated rural areas, is a factor which tempers, to some extent, the desirability of a small council size. If this factor had not been present in this proceeding, the Board would have seriously considered a much smaller council.

e) Public opinion

[134] The public's opinion on its form of government is a topic that comes before the Board in a variety of matters. In *Re Certain Ratepayers of the Municipality of the District of Chester*, MB-98-05, the Decision, dated August 26, 1999, dealt with a request to incorporate a town. The Board stated:

In a democratic society, the Board can contemplate few, if any, rights which are ultimately more important than the people's right to participate in choosing their form of government.

[Board Decision, August 26, 1999, p. 9]

[135] In dismissing an appeal of the Board's decision on a number of grounds, Freeman, J.A., speaking for the Court of Appeal, acknowledged the Board's adoption of this principle: see *Certain Ratepayers of the Municipality of the District of Chester v. Municipality of the District of Chester*, [2000] N.S.C.A. 19, at para. 15.

[136] In the present matter, there is compelling evidence respecting the public's desire to have a much smaller council.

[137] The polling results presented by Mr. Mills showed strong support for a smaller council.

[138] In response to their preference of the desired council size, the mean number given consistently since November 2010 was 14 councillors.

[139] The Board notes that HRM never asked this question about specific size in its survey by Thinkwell Research.

[140] The Board also notes Councillor Outhit's evidence that the Governance Committee decided not to accept polling data such as that conducted by Mr. Mills.

[141] The Board finds that it is appropriate to consider public opinion in determining the size of council. Ultimately, the public will pay for the governance model adopted by HRM, receiving the service levels and accessibility consistent with the council size. In the end, it is their council.

[142] Taking all of the above into account, the Board concludes that public opinion (when properly determined) is a factor which should carry significant weight in determining council size. Accordingly, in this matter, the Board attributes significant weight to the polling results, which express the public's overwhelming desire to have a much smaller council.

f) Cost savings

[143] A number of the letters of comment and evening presentations suggested that reducing the size of council would result in cost savings.

[144] Mr. Fisher, Acting Chief Financial Officer for HRM, testified that the savings resulting from a smaller council would be relatively insignificant in terms of its impact on the tax rate.

[145] Mr. Mills acknowledged in his final argument that cost savings are not the motivating factor behind his request for a smaller council.

[146] The Board concludes that potential cost savings are not a material factor in assessing the request by those seeking to reduce the size of HRM's council. Any reduction would likely cause support costs for the remaining councillors to rise and negate some of the savings occasioned by the reduction in council size.

g) Community councils

[147] The Board heard evidence at the hearing about the present and future role of community councils in HRM.

[148] The *HRM Charter* contains provisions relating to the creation of community councils. Sections 24 and 25 provide:

Community councils

24 (1) The Council may, by policy, establish a community council for an area.

(2) A policy establishing a community council must define the boundaries of the community and the community must include the whole, or part of, at least three polling districts.

(3) The number of electors in a community must be at least twice the average number of electors per polling district in the Municipality.

(4) The community council for each community consists of the councillors elected from the polling districts included, in whole or in part, in the community.

Powers and duties of community council

25 The powers and duties of a community council include

(a) monitoring the provision of services to the community and recommending the appropriate level of services, areas where additional services are required and ways in which the provision of services can be improved;

(b) the establishment of one or more advisory committees;

- (c) recommending to the Council appropriate by-laws, regulations, controls and development standards for the community;
- (d) recommending to the Council appropriate user charges for the different parts of the community;
- (e) making recommendations to the Council respecting any matter intended to improve conditions in the community including, but not limited to, recommendations respecting
 - (i) inadequacies in existing services provided to the community and the manner in which they might be resolved, additional services that might be required and the manner in which the costs of funding these services might be raised, and
 - (ii) the adoption of policies that would allow the people of the community to participate more effectively in the governance of the community; and
- (f) making recommendations to the Council on any matter referred to it by the Council.

[149] Ms. Mellett stated that the preservation and configuration of community councils were key factors in the deliberations of the Governance Committee and Regional Council.

[150] Ms. Mellett and some of the councillors at the evening session mentioned HRM's attempts to have the Province amend the legislation to confer more power on community councils, including the authority to impose area rates.

[151] HRM currently has six community councils of various sizes ranging from three councillors to six.

[152] Ms. Mellett stated that the Governance Committee considered governance models of 15, 18, 20 and 23. However, it did not consider council sizes of less than 15 because, in its view, a smaller Regional Council would not support a community council governance model.

[153] Several speakers at the evening session also stressed the important role played by community councils to address local issues, and the potential for citizens to sit as members in addition to the required minimum of three councillors.

[154] Dr. Williams and Mr. Novack both noted the importance of community councils in the governance model of HRM.

[155] The Board is satisfied, based on the evidence in this hearing, that the community council governance model can be accommodated with a council size as low as 12, which provides adequate representation for urban, suburban and rural areas in HRM.

[156] Moreover, the Board concludes that it is appropriate, for this exercise, to consider community councils with a minimum of three councillors, as presently contemplated by s. 24 of the *HRM Charter* and as is presently used in practice by HRM.

h) Findings - Number of councillors

[157] Having reviewed the evidence, the Board considers that several factors lead to the conclusion that HRM's council size should be smaller.

[158] First, when residents were asked about their preference for the size of Regional Council, 82% of respondents favoured a reduction below the status quo of 23 councillors. Only 6% desired to retain the status quo, 1% wanted an increase in council size, and 11% were undecided.

[159] Removing the undecided, 92% of respondents wanted fewer than the status quo, with the most common responses being: 9-10 councillors (16%), 11-12 councillors (23%) and 15-16 councillors (21%). No other response received higher than 9%. Further, 77% of respondents favoured a reduction to 16 councillors or less.

[160] In response to their preference of the desired council size, the mean number given consistently since November 2010 was 14 councillors.

[161] The Board is satisfied that the polling results show that a vast majority of HRM residents desire a reduced council size.

[162] Second, as noted earlier in this Decision, s. 368(4) of the *Act* provides:

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.

[163] One of the issues the Board must consider is the number of electors. The total number of electors is a consideration clearly related to the number of electors in each polling district. The Board considers it is appropriate to take into account what other comparable jurisdictions consider to be reasonable with respect to council size and the number of electors per polling district, especially when the comparator cities are used by HRM for other purposes.

[164] When compared to other similar sized urban centres across Canada, the average ratio of population to councillors is roughly double that in HRM (i.e., an average of about 38,500 per councillor across Canada compared to 16,200 in HRM). Also, the same comparisons show an average council size of 14-15 councillors.

[165] Third, despite the deficiencies noted earlier with the public consultative process, the Governance Committee recommended to Regional Council that the council size be reduced to 20. Regional Council, after what was described as a "vigorous and informed debate", did not accept the recommendation and maintained the status quo. In so doing, it failed to adopt the study conducted by its own Governance Committee which reflected a desire to reduce council size.

[166] Further, Dr. Williams, in his Report, concluded that the council size should be reduced to 20. In his testimony at the hearing, Dr. Williams, when asked, had reservations about going down as low as 16, because it was a significant change, but did not rule it out as a viable possibility.

[167] Moreover, the overwhelming response from the public in this proceeding has been to reduce the size of council. As a result of the advertisement of the Notice of Hearing, the Board received letters of comment. All but four of the 63 letters favoured a reduction in council size. Many of the letters in support of a smaller council favoured a significant reduction in the number of councillors, instead of a more modest change.

[168] In terms of service issues for HRM residents, the Board notes the HRM call centre receives well over half a million calls per year. The evidence was that this is a very good service.

[169] The Board also considers that HRM's community council governance model can be accommodated with a council size as low as 12, which provides adequate representation for urban, suburban and rural areas in HRM.

[170] The Board concludes that council size should be reduced. From the evidence, there is strong support for three more likely scenarios: council sizes of 20, 16 and a council in the range of 12-14. In the Board's view, a reduction of council to 20 members is not sufficient. It is not in accord with the comparisons to other large urban centres across Canada (including the ones used by HRM in its own analysis for issues like councillor remuneration). A greater reduction is needed to bring it closer to these other centres in terms of the ratio of population (or electors) per councillor. If virtually all of these comparator cities can run their governance models with a much higher ratio (up to 38,500 per councillor compared to 16,200 in HRM), the Board sees no reasonable basis for HRM being significantly lower. Moreover, public opinion, as expressed through Mr. Mills' survey and through the public's participation at the Board hearing, clearly wants more than a modest reduction.

[171] However, the Board hesitates to reduce the council size too much. The Board accepts the evidence of Dr. Williams that too significant a reduction may have negative consequences. The Board is not persuaded the public is prepared to accept a change to council size in the range of 12-14 councillors.

[172] Taking into account all of the evidence, the Board concludes that 16 councillors and polling districts (plus the Mayor) is an appropriate council size for HRM.

[173] The Board recognizes that the reduction in the size of Council does not specifically address some of the governance issues raised by the intervenors and others. These governance issues and structure are more appropriately dealt with by Council.

VII DETERMINATION OF POLLING DISTRICT BOUNDARIES

[174] As a result of the Board's finding that Regional Council shall have 16 polling districts, the second phase of this proceeding must address the reasonableness and fairness of the boundaries of the respective districts. The Board now refers that issue back to HRM to determine the appropriate polling district boundaries and return to the Board for the second phase of this proceeding. The Board reserves the jurisdiction to consider the boundaries and a hearing has been tentatively scheduled for October 12-14, 2011.

[175] The Board considers it appropriate to provide guidance to HRM on a few points related to determining the boundaries.

[176] In establishing polling district boundaries, the factors to be considered remain those outlined in s. 368(4) of the *Act*. One of the factors listed is relative parity of voting power. In *Re Halifax Regional Municipality*, [2004] NSUARB 11, the Board

outlined appropriate standards for relative parity of voting power, determining that the target variance for relative parity should be $\pm 10\%$, provided community of interest issues are generally satisfied. These standards have been applied by municipalities across the province since 2004.

[177] The Board is mindful that HRM Council, staff, or consultants will now face the challenge of drawing polling district boundaries that meet the standards outlined by the Board. As noted in the hearing, HRM has a large geographic size containing urban, suburban and rural components. In conducting this exercise, HRM should note that, in exceptional cases, the Board has allowed variances up to and over $\pm 25\%$, where large geographic areas and communities of interest justify the departure from the standard which normally applies. The Board considers that such higher variances may apply in a few of the polling districts to be drawn in this proceeding, such as large sparsely populated rural areas. It should be noted that the more the variance exceeds 10% the greater and more detailed the justification the Board will expect.

[178] Finally, in its last HRM municipal boundary Decision reported at 2007 NSUARB 166, the Board concluded that the Cherry Brook/Lake Loon area in Polling District #3 should be incorporated into Polling District #4 (Cole Harbour).

[179] This specific boundary issue was the topic of significant discussion and evidence in both the 2004 and 2007 applications by HRM.

[180] In the present application, the Cherry Brook/Lake Loon area appears to have been removed from Polling District #4 (Cole Harbour). In preparing polling district boundaries, HRM is cautioned that any attempt to separate the Cherry Brook/Lake Loon area from the Cole Harbour area will require compelling reasons to justify the departure

from the Board's previous findings of the strong community of interest in this area of HRM.

VIII SUGGESTED STATUTORY AMENDMENTS

[181] A number of witnesses and presenters suggested that the Board should consider addressing possible statutory amendments relating to this type of proceeding and other matters.

[182] The three areas identified during the hearing included: 1) removing from HRM the task of conducting a study into the number of councillors and the boundaries of polling districts and transferring that task to an independent body like the Board; 2) conferring more power on community councils, including the authority to impose area rates; and 3) dividing Halifax Regional Municipality into its rural and urban component parts.

[183] Exhibit H-21 sets out a resolution of HRM Regional Council that was passed (with only one vote opposed) after Regional Council completed its review and approved the making of the present application. The resolution reads as follows:

Whereas the Nova Scotia Utility and Review Board is the body appointed by the Government of Nova Scotia under the Municipal Government Act (MGA) to review, alter or confirm the boundary review required to be undertaken by the Municipality; and

Given that the Nova Scotia Utility and Review Board already has broad powers, under the MGA Section 368, in regard to all aspects of the municipality's boundary submission;

It was MOVED by Councillor Hum, seconded by Councillor Sloane,

that Halifax Regional Council request that the Province of Nova Scotia amend the MGA Part XVI, Section 369 to remove Council as the body required to conduct the study of the number and boundaries of polling districts in the municipality and to direct that the Nova Scotia Utility and Review Board shall be the body that both conducts the study and sets the number and boundaries of polling districts and number of Councillors for the Halifax Regional Municipality, and to advance this amendment to the Province of Nova Scotia, to take effect for all future boundary reviews.

[Exhibit H-21]

[184] The Board has heard similar requests from municipalities in other boundary review hearings.

[185] When asked about this issue, Mr. Mills stated:

Well, you know, and I'm on a lot of Boards and -- both private and public, and governance is always one of the most important issues that is on the agenda and big issues, you know. Big issues through dealing with things like pensions for instance, and decision making and authority...

[Transcript, June 20, 2011, p. 653]

[186] While the Board is mindful of the difficulty faced by a municipality in conducting a study of the number and boundaries of polling districts, the Board finds that this task is one that is appropriately and best done by the affected municipality and not an outside body. The Board considers that its current review role is appropriate to ensure compliance with the *MGA* provisions and the consistent application of representation principles across the Province.

[187] The second issue raised during the hearing relates to attempts by HRM to seek amendments to the *HRM Charter* to confer more power on community councils, including the authority to impose area rates.

[188] Ms. Mellett referred to the following resolution passed by HRM Regional Council on August 3, 2010 and forwarded to the Province:

MOVED by Councillor Streach, seconded by Councillor Sloane that Halifax Regional Council:

1. Seek amendments to the HRM Charter that will allow Halifax Regional Council to delegate general authority to Community Councils for local matters, with the intent that the delegation of this authority evolve overtime;

2. Approve in principle the vesting of authority to Community Councils for the establishment of area rates for enhanced services deemed by Halifax Regional Council to be local, if the necessary amendments to permit this are made to the HRM Charter, and

3. Approve the adoption in principle by Halifax Regional Council of the use of Consent Agendas, with the goal of achieving greater effectiveness at Regional Council meetings.

MOTION PUT AND PASSED.

[Exhibit H-1, Tab 9]

[189] Ms. Mellett and Mayor Kelly suggested that the Board consider making positive comments in its Decision about the proposed amendment.

[190] Further, various presenters at the evening session suggested that the community councils would benefit from residents serving on the councils. Currently, only councilors are permitted under the *Act* to be members of community councils.

[191] As noted earlier in its Decision, the Board recognizes the important role of community councils. The Board has concluded that the present requirements for community councils can be accommodated in a council size of 16.

[192] In the view of the Board, the authority conferred upon community councils is a policy matter to be determined by the Province, not the Board.

[193] The final point raised during the hearing relates to the combined urban and rural nature of HRM, as canvassed earlier in this Decision.

[194] Mr. Mills testified that, in his view, the present urban/rural makeup of HRM is not workable. He described various examples which he believed demonstrated the incompatible tasks of administering both urban and rural areas. In his opinion, the root causes of the problem lie in the sheer size of the regional municipality and HRM's inability to meet the expectations of rural residents who, Mr. Mills says, request the same level of services as residents in the urban core.

[195] While he recognized the Board's lack of jurisdiction in this respect, Mr. Mills urged the Board to comment on the issue in its Decision and make a recommendation to the Province to divide the Municipality.

[196] As noted above, Mr. Novack also intimated that a significant challenge facing HRM is its large geographic size and diversity, leading to a wide “array of divergent interests”.

[197] Clearly, the issue raised by Mr. Mills is outside the Board’s jurisdiction. Further, even if it were inclined to consider Mr. Mills’ request, the evidence in this hearing does not clearly lead to the desirability of Mr. Mills intended result. Moreover, the public did not have notice that this issue would be discussed in this hearing and there may be other views in the community about the issue. This was not the purpose of the hearing. In the circumstances, the Board considers it appropriate to make no comment on the issue.

[198] On the above three issues, the Board concludes that it will not make any comments or recommendations to the Province.

IX SUMMARY

[199] The Board is satisfied that the polling results show that a vast majority of HRM residents desire a reduced council size. When residents were asked in a public opinion survey about their preference for the size of Regional Council, 82% of respondents favoured a reduction below the status quo of 23 councillors, while 77% of respondents favoured a reduction to 16 councillors or less.

[200] When compared to other similar sized urban centres across Canada, the average ratio of population to councillors is roughly double that in HRM (i.e., an average of about 38,500 per councillor across Canada compared to 16,200 in HRM). Also, the same comparisons show an average council size of 14-15 councillors.

[201] HRM's Governance Committee and Board Counsel's consultant, Dr. Williams, recommended a reduction in council size, albeit to 20. Dr. Williams, however, did not rule out a council size of 16 as a viable possibility.

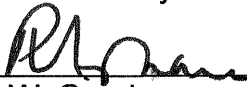
[202] Moreover, the overwhelming response from the public in this proceeding has been to reduce the size of council. As a result of the advertisement of the Notice of Hearing, the Board received letters of comment. All but four of the 63 letters favoured a reduction in council size. Many of the letters in support of a smaller council favoured a significant reduction in the number of councillors, instead of a more modest change.

[203] Taking into account all of the evidence, the Board sets the number of councillors and polling districts at 16 (plus the Mayor). It considers this council size to be reasonable and appropriate for HRM.


[204] As a result of the Board's finding that Regional Council shall have 16 polling districts, the second phase of this proceeding must address the reasonableness and fairness of the boundaries of the respective districts. The Board now refers that issue back to HRM to determine the appropriate polling district boundaries and return to the Board for the second phase of this proceeding. The Board reserves the jurisdiction to consider the boundaries and a hearing has been tentatively scheduled for October 12-14, 2011.

[205] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 27th day of July, 2011.



Peter W. Gurnham



Roland A. Deveau



Murray E. Doehler