

TO: Mayor Kelly and Members of Halifax Regional Council

SUBMITTED BY:



Dan English, Chief Administrative Officer



Geri Kaiser, Deputy Chief Administrative Officer - Corporate Services
and Strategy

DATE: July 20, 2009

SUBJECT: District Boundary Review

ORIGIN

Section 364 of the HRM Charter, which references Part XVI Section 369 of the Municipal Government Act, requires that HRM undertake a full district boundary review every eight (8) years. The Nova Scotia Utility and Review Board (NSUARB) allowed HRM to undertake a modified review in 2006-2007, but ordered that a full district boundary review be submitted to the NSUARB by December 31, 2010.

RECOMMENDATION

It is recommended that:

1) HRM's major District Boundary Review required to be submitted by December 31, 2010 be conducted in two (2) phases. The first phase to address HRM's Council governance structure and the second phase to set the specific district boundaries.

(RECOMMENDATIONS CONT'D ON PAGE 2)

RECOMMENDATIONS CONT'D

2) For phase 1, the establishment of HRM's Council governance structure, a Committee of Council be struck to consider appropriate alternatives for HRM and bring forward a recommendation to Regional Council on or before February 24, 2010 with regard to:

- the size of Regional Council appropriate to decision making of a Regional nature; and
- the size of Regional Council to support a Community Council structure appropriate to community decision making.

And, that the Committee of Council be comprised of:

- The Mayor
- one (1) Councillor nominated from each of the Community Councils
- one (1) member of HRM's Executive Management Team

And, that the Committee of Council undertake the public consultation deemed necessary to ensure appropriate public input and consultation on the matter.

3. For phase 2, the setting of specific district boundaries based on the direction approved by Regional Council, Regional Council appoint an independent Advisory Committee. The committee to be comprised of residents and experts, supported by appropriate staff resources and expertise to determine the specific district boundaries for the number of districts determined by Council in Phase 1 of the District Boundary Review process. This Advisory Committee will:

- ensure the boundaries are set in accordance with the NSUARB and legislative requirements to be considered in the setting of district boundaries including but not exclusive to communities of interest, planning areas, and meeting the population/voter equity between districts "plus or minus 10%" - or defended otherwise;
- undertake the public consultation deemed necessary to ensure appropriate public input and consultation on the boundaries including Councillors, stakeholders and the broader public; and
- bring forward a recommendation for ratification (for or against) on the District Boundaries to Regional Council on or before September 28, 2010.

BACKGROUND

The Halifax Regional Municipality undertook the last major District Boundary Review in 2003 in advance of the 2004 municipal elections. A limited boundary review process was undertaken in 2007 in advance of the 2008 municipal elections. In 2007 the NSUARB ordered that a full district boundary review be submitted to the NSUARB by December 31, 2010.

In January 2009, under Council's focus area of *Governance & Communications*, Council adopted the following three (3) major governance priorities :

- Committees of Council Reform
- Council size and roles
- The role of Community Councils

Two (2) of these initiatives, Council size and role and the role of Community Councils, are an integral part of determining the governance model required to guide the District Boundary Review process.

DISCUSSION

In March 2009 a staff working group was formed to begin preparing for the District Boundary Review process.

The working group is chaired by the Municipal Clerk's Office, with senior representatives from Community Development- Planning & Development Services, Legal Services, and Business Planning and Information Management - Data Division and supported by a technical team of staff with the skill required to support the District Boundary review. The intent of the working group was to:

- Review previous NSUARB decisions in regard to District Boundary Review to be able to provide guidance on the NSUARB direction in undertaking the review.
- Review existing and required data (population, planning, etc) necessary to support the District Boundary Review process;
- Propose to Council a structure and approach to enable HRM to complete the review
- Provide staff and technical support to the Boundary Review Process adopted by Council

This report is intended to present an overview of the findings to date and propose, for Council's consideration, a go forward approach in undertaking the major District Boundary Review required of HRM.

Nova Scotia Utility and Review Board

A full summary of previous NSUARB decisions has been prepared by Legal Services and is attached as Appendix A of this report.

The NSUARB, through their previous decisions, have provided specific direction with regard to conducting a major District Boundary Review.

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.

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.

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.

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.

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 section 368 (4) of the Act (at paragraph 107-111).

A Phased Approach

The NSUARB anticipates the HRM's District Boundary Review will be a two (2) phased approach:

- The first phase is intended to establish the Council Governance structure that will provide the rationale and guidance for the final determination of the specific District Boundaries.
- That governance review should include the role of Community Councils, the role of Regional Council, the role of Councillors in regard to regional, community decision making and constituent support
- The second phase will involve setting the specific District Boundaries, guided by direction provided by Council, on the Council governance structure from Phase 1 .
- The establishment of specific district boundaries will be required to follow the direction on governance adopted by Council in Phase 1 and the specific NSUARB and legislative requirements in regard to retaining "communities of interest" and meeting population/voter equity between districts "plus or minus 10%".

Council as the Decision Making Body

The NSUARB anticipates that Council will take the lead as the decision making body, especially in regard to Phase 1 and provide the governance model that will determine the number of Districts and governance direction for HRM. The final submission, including location of specific boundaries must be based on a Motion of Regional Council but can involve staff, other experts, and community advisors.

Appropriate Public Consultation

The NSUARB anticipates that appropriate public consultation will be applied in each of the two phases. They also recognize that the type of public consultation will differ between Phase 1 and Phase 2.

Phase 1 will, by necessity, involve a more broad based approach to consultation on issues of governance and the implications regarding the size of Regional Council, the number of districts within this structure and the number of Community Councils which are appropriate.

Phase 2 will require consultation with specific communities regarding the setting of specific district boundaries and their impact on those communities.

Recommendations

In keeping with the direction provided by the Nova Scotia Utility and Review Board the following structure and process is proposed to allow HRM to meet the requirement to undertake and submit a recommendation on District Boundary Review to the NSUARB by December 2010.

Phase 1 - HRM's Governance Structure

Staff are recommending that a Committee of Council be struck :

- To consider alternatives and bring forward recommendations on the appropriate Council governance structures for HRM in regard to:
 - a Regional Council of a size appropriate to decision making of a Regional nature; and
 - a Regional Council of a size that supports a Community Council structure appropriate to community decision making,
- To undertake the public consultation they deem necessary to ensure appropriate public input and consultation on the matter.
- To bring forward a recommendation to Regional Council for its consideration on or before February 28, 2010.

That the Committee of Council be comprised of the Mayor, one Councillor from each Community Council and a member of the Executive Management Team. The Committee of Council would be supported by appropriate staff resources.

Phase 2- Setting District Boundaries

That, *based on the direction given by Regional Council (as determined in Phase 1)*, an independent Advisory Committee comprised of residents and experts, be struck and supported by appropriate staff resources and expertise.

That the independent Advisory Committee determine the specific district boundaries for the number of districts determined by Council in Phase 1 of the District Boundary Review process:

- ensure the boundaries are set in accordance with the NSUARB and legislative requirements to be considered in the setting of district boundaries including but not exclusive to communities of interest, planning areas, and meeting the population/voter equity between districts “plus or minus 10%” - or defended otherwise.
- undertake the public consultation they deem necessary to ensure appropriate public input and consultation on the boundaries including council, stakeholders and the broader public.
- bring forward a recommendation on specific District Boundaries to Regional Council for consideration on or before September 30, 2010.

It is anticipated that the recommendation would be ratified by Council with a single vote that either accepts (in whole) or rejects (in whole) the recommendation of the Committee provided the direction provided by Council in Phase 1 is followed.

In Summary

Undertaking the District Boundary Review required by HRM within the time frames required by the Nova Scotia Utility and Review Board will be a major undertaking for Council, the Community and staff.

Conducted effectively, this review will determine the governance model and supporting Council structure of HRM and will provide the cornerstone for decision making that will build and strengthen the Region and its communities over the coming decades.

BUDGET IMPLICATIONS

Community Development (Planning & Development), BPIM (Data) and CAO's Office, DCAO's office (Municipal Clerk) and Finance have committed funds from their combined 2009/2010 Operating Budgets to support Phase 1 of the District Boundary Review process.

It is anticipated that a minimum of \$50,000 will be required in fiscal 2010-2011 to support the administrative, public consultation and technical support of the Phase 2 District Boundary Advisory Committee and for the preparation of the submission to the NSUARB. These funds would be submitted as part of the 2010/2011 Budget and Business planning process and would be required to be raised through the general tax rate.

FINANCIAL MANAGEMENT POLICIES / BUSINESS PLAN

This report complies with the Municipality's Multi-Year Financial Strategy, the approved Operating, Capital and Reserve budgets, policies and procedures regarding withdrawals from the utilization of Capital and Operating reserves, as well as any relevant legislation.

ALTERNATIVES

That Council determine an alternative approach to conducting the required District Boundary Review for submission to the Nova Scotia Utility and Review Board by December 31, 2010. This alternative is not recommended.

ATTACHMENTS

Appendix A: Summary of previous NSUARB decisions

A copy of this report can be obtained online at <http://www.halifax.ca/council/agendasc/cagenda.html> then choose the appropriate meeting date, or by contacting the Office of the Municipal Clerk at 490-4210, or Fax 490-4208.

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MEMORANDUM

RE: District Boundary Review Process

BACKGROUND

This Memo reviews the decisions of the Utility and Review Board in the applications made by the Halifax Regional Municipality (HRM) in 2000, 2003, and 2007 for amendments to its municipal electoral district boundaries (2000 NSUARB 44, 2004 NSUARB 11, 2007 NSUARB 166). It also reviews the Board's decisions in the applications made by the Cape Breton Regional Municipality (CBRM) in 1999 and 2007. In 1999, the number of councillors in CBRM was reduced from 21 to 16 (1999 NSUARB 119, 2007 NSUARB 154). All decisions are available free of charge online at www.canlii.org.

The purpose of this Memo is to provide a summary of the Board's position with respect to applications to the Utility and Review Board for amendments to municipal electoral district boundaries, including its recommendations regarding the process municipalities should follow.

HRM'S APPLICATION - 2000

The decision gives some background as to why HRM has a 23-member Council. The current number of councillors was set by the Board in 1995 at the time of amalgamation and was to reflect the distribution of rural and urban voters within the newly created Regional Municipality. In 1995, the Board felt that Council size should not exceed 25 councillors. The 2000 application was to increase the number of polling districts and councillors to 24.

The Council appointed a District Boundaries Advisory Committee in September 1999, consisting of 9 citizens with HRM staff as support. There were regular committee meetings and 3 advertised Regional meetings seeking input from the public. The Committee also gathered information on the relative size of municipal governments in other Canadian cities. The Board acknowledged the difficulty faced by the Committee in finding comparable municipal governments: regional municipalities in Nova Scotia are a variation of the Nova Scotia rural municipalities, but with a larger urban component and a larger geographic size.

The Committee felt that to address the variance in 2 polling districts, which exceeded the +/- 25% permissible variance in the time it had, the only solution was to add 1 polling district: hence the recommendation to Council for 24 polling districts.

The decision discusses the role of a councillor as set out in the *Municipal Government Act*. The Board also refers to the handbooks and training provided to councillors by what is now Service Nova Scotia and Municipal Relations. The Board acknowledged that the role of the councillor varies with each Council and with each

individual councillor, depending on what is appropriate for their respective areas. The Board referred to two views on the role of a councillor: hands-on, or a Board of Directors management style. The Board also noted that it had never attempted to set a minimum number of voters per councillor.

The Board provided some guidance on how a committee might approach the task of reducing Council size, if such a reduction were to be considered. The Board stated:

The Board notes that there are many factors that should be considered in determining the extent of such a reduction. As noted by some witnesses at the hearing, including Councillor Ron Cooper, the first step is to move away from any preconceived notions of what the appropriate number of polling districts should be. In particular, the approach should not involve an examination of how the status quo is to be altered. Instead, the approach should determine how many councillors are required to conduct regional governments' matters. To do otherwise, places undue emphasis on the "status" of communities that existed prior to the amalgamation of HRM. To achieve a truly regional style of municipal government, there will have to be some compromise or accommodation by all concerned, in order to achieve a Council size which benefits the entire Regional Municipality (at paragraph 32).

The Board, when comparing the number of voters per district to other Canadian urban municipalities notes that special consideration must be given to the rural communities which comprise part of HRM when determining the appropriate number of polling districts. However, the Board expressed its view that "the ratio of the number of electors per councillor should now increase in HRM, particularly in the urban and suburban regions" (at paragraph 35).

The Board was reluctant to increase the number of polling districts as this increase was only a short-term solution which could not be sustained in each future application. The Board stated:

Based on all that it has heard, it is the opinion of the Board that HRM would be better served with a reduced number of councillors. The exact number of councillors, however, can only be determined after public consultation and appropriate study. A Council comprised of between 12 and 16 members would result in an average number of electors per councillor ranging from 17,159 (16) to 22,878 (12). The Board notes that this range still compares favourably with the average number of electors per councillor found in other Canadian urban municipalities as shown on page 13 (at paragraph 45).

The Board found that Council should adopt a "regional style" type of Council, similar to the approach taken by the Cape Breton Regional Municipality when it reduced the number of councillors from 21 to 16 (see summary of CBRM's 1999 application, below).

With respect to the process, the Board noted that HRM and its designated Review Committee should seek public consultation only after a wide range of options have been formulated for the public's consideration. The Committee, in this instance, had not been given sufficient time to seek informed public input on the issues. The Board did not order a reduction in the number of polling districts, even though it felt it was warranted, as there had been insufficient public consultation and study.

The Board directed HRM to file an application no later than June 30, 2003 for a reduction in the size of Council, to take effect for the October 2004 municipal election.

HRM'S APPLICATION - 2004

In 2004, the application made by Council was 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.

The District Boundaries Advisory Committee was struck by Municipal Council on September 18, 2001 and provided with terms of reference. Its initial responsibility was to recommend the appropriate size of a Municipal Council and, following a public consultation process, the DBAC recommended to Regional Council that the number of councillors be reduced to 20. The report went to Council on September 4, 2002 and Council accepted the recommendation.

At that time, Council requested that the DBAC recommend boundaries for the 20 polling districts. Further public meetings were held by the DBAC and a proposed 20 polling district configuration was brought before Municipal Council on May 13, 2003. Rather than adopt a DBAC recommendation, the motion adopted by Council was:

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.

The application was filed with the Board in June 2003 and, in August 2003, the Board raised concerns with respect to the elector variance contained within the application, as some variances were greater than +/- 25% (including District 16 which was 47%). The Board requested that HRM file an alternative proposal that would adopt a maximum elector variance of +/- 25%.

Witnesses called at the hearing were HRM planning staff, Hillary Campbell and Angus Schafenburg, as well as Howard Epstein (MLA), Ron Cooper (Councillor), Russell Walker (Councillor) and Len Goucher (Councillor). Two interveners, Paul Highland and Beverly Miller, also gave testimony. Counsel appeared on behalf of the Utility and Review Board and called Robert Radchuck, FCA, P. Eng., who was qualified as an expert witness 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.

The DBAC was made up of citizens and its role was to advise Council as to the appropriate size of Regional Council and then to determine the boundaries for recommended districts. The first meeting was held in January 2002 and the Committee 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.

The consultation undertaken by the DBAC did not reveal an overwhelming desire for a smaller Council. The evidence before the Board included concerns that a reduced Council may lead to larger Community Councils that would not be able to respond as effectively to community concerns. It was also noted that Council had not specifically debated or addressed the issue of Council size, or the governance structure of Council. The Board acknowledged the Community Councils had become an essential feature of the governance structure of HRM.

In response to the evidence that Council had never discussed the appropriate size of Council, the Board stated:

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 7 citizens to deal with the issue.

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 (at paragraphs 45, 46). [emphasis added]

The Board's position on the process used by HRM to make its application in 2003 was clear:

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

The Board noted that the DBAC did not give any significant reason or justification as to why it thought 20 was the appropriate number of councillors. The Board also noted that Council, without debate, abandoned the DBAC process and passed a motion for an application that supported the status quo. Based on the evidence, the Board was not willing to reduce the size of Council.

In respect of the lack of debate by Council on the appropriate number of councillors, the Board commented as follows:

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 appears 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) in 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 (at paragraph 63). [emphasis added]

Although the Board had recommended 12 to 16 councillors in its 2000 decision, the Board acknowledged in its 2004 decision the crucial role Community Councils play in HRM's governance structure and that to be effective, they must be a minimum size and not cover too large a geographic area. As such, the Board determined that this meant no fewer than 18 to 20 councillors are needed if the current Community Council structure is to be maintained.

In establishing the polling districts, the Board noted that the target variance is to be +/- 10%, provided community of interest issues are generally satisfied. Any variance in excess of +/- 10% must be justified in writing: the greater the excess, the more detailed the written explanation that would be required to justify it. Negative variances in areas that experience growth are acceptable as they help to ensure continued relative parity over a reasonable period of time. The Board laid out the following as the criteria for determining a community of interest:

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 centers.

In conclusion, the Board provided guidance for future applications:

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.

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.

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.

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.

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 section 368 (4) of the *Act* (at paragraph 107-111). [emphasis added]

The Board gave further specific guidance with respect to public consultation, stating:

Just as with determining the desired number of districts, public consultation is essential to the 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 (at paragraph 115).

The Board approved 23 districts.

HRM'S APPLICATION - 2007

The application in 2007 only served to realign 3 districts, as well as move the Cherry Brook area into the Cole Harbour district. The Board did note that the public consultations undertaken regarding these minor changes were appropriate, stating:

The Board commends HRM on the extensive consultation and study process followed. Both staff and Council worked diligently to ensure the views of the public were properly solicited and that communities of interest and relative parity of voting power were canvassed in the application. It is to be noted that Mr. Garnett and Ms. Campbell proved to be very helpful in the Board's review of this matter.

Further, HRM will undertake a comprehensive review of the number and boundaries and polling districts in 2010, in advance of a 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 (at paragraphs 49, 50).

CBRM'S APPLICATION - 1999

The Cape Breton Regional Municipality's application in 1999 was to reduce the number of polling districts from 21 to 16. The Board approved 21 districts when the Municipality was established in 1994 because it was concerned about the division of rural and urban voters and the large geographic size of one of the proposed districts.

CBRM held a plebiscite in conjunction with the 1997 municipal election. The question was "Should the CBRM Council be downsized?" Of the 62% of the eligible voters who voted, 70% voted in favour of downsizing. In May 1998, a Boundary Review Committee was established by the municipality, which was comprised of 9 councillors, the Mayor and 3 citizens. The Committee's mandate was to make a recommendation on downsizing Council.

There was some discussion by the Board of the nature of a regional municipality in Nova Scotia relative to other amalgamated entities in Canada, noting that the CBRM was a "community of communities" and that, when proposing polling districts, those communities should not be broken up. The Board heard evidence from David Muise, Mayor of CBRM, who stated:

...a smaller Council will focus its attention on a regional basis rather than continuing what he considers to be a parochial approach, where the interests of the residents' former municipal units are pitted against each other (at paragraph 18).

The Corporate Services Committee of the Cape Breton Regional Municipal Council had commissioned a report from KPMG entitled "Governance and Organizational Review of the Cape Breton Regional Municipality." Council downsizing was not part of the original mandate of the report and the report was issued a month after Council passed its motion to reduce the number of polling districts. The authors did, however, include a recommendation that Council be reduced to 8 to 10 members. Council considered the report and rejected that particular recommendation. Further, the evidence before the Board was that KPMG did not consult with the public before making its recommendations.

In approving the application to reduce the size of Council from 21 to 16 councillors, the Board noted that there was no reason for the Board not to approve the application. Council supported the application that was made and the Board noted that the reduction in the number of councillors was consistent with the results of the plebiscite held in the previous municipal election.

CBRM'S APPLICATION - 2007

This decision is similar to the 2004 decision regarding the Halifax Regional Municipality's application: the

Board found that the method used by the Cape Breton Regional Municipality to conduct the review was inappropriate and should not be used by other municipalities. CBRM struck a Boundary Review Committee consisting of 7 councillors to review the number of councillors and establish the polling districts, chaired by Councillor Vincent Hall. As part of their deliberations, they held 5 public sessions throughout CBRM, followed a media campaign to ensure relevant information was available to the public, and established a telephone hotline and utilized the Municipality's website.

The issue of the number of councillors was a topic of conversation in CBRM at the time and the CBC and the District Labour Council held forums on the topic as well. The Mayor also conducted a telephone poll and a mail-out poll which was enclosed with tax bills, in an attempt to gain an understanding of the views of the public as to the size of Council. The Mayor appeared at the hearing on behalf of a group called "Voices of the Electorate" (VOTE), and spoke against the application that had been submitted by CBRM Council.

The Board stated:

The Board finds that a municipality having the size and sophistication of CBRM should have conducted a more thorough and substantial study before any public consultation. The fact that the size of Council and governance models were being actively discussed by the residents at the time the BRC was struck, is evidence that such a study was required.

Rather than embrace the opportunity to canvass these issues fully, the BRC, under the helm of Councillor Hall, essentially ignored and, in some cases, actively derided those who offered alternative views about the role of Council...

This missed opportunity had resulted in an opposing application to the Board. This has also resulted in an application by CBRM which lacks full public support for any of its findings.

The Board agreed with Professor Urbaniak that the process was a debacle, and that it should not serve as a model to be followed by others (at paragraphs 101-104).

The Board concluded that the Municipality did not conduct a proper study in its review of the appropriate number of councillors and polling districts, nor did it adequately look at the potential impact of that decision on the style of governance. The Board maintained the status quo arising out of this application as there was insufficient time for a proper study to be done prior to the 2008 election.

The Board addressed the suggestion of holding a plebiscite to determine, in a definitive way, whether the public supported the downsizing of Municipal Council. Professor Urbaniak made the following comment on plebiscites in his testimony before the Court:

...government is a deliberative process as well. So simply going into a process and saying, okay, we're going to start the process by holding a plebiscite and whatever the plebiscite decides that's what we'll do and we'll very quickly conclude the process. Well, I'm not sure that such a process would subscribe to the noblest ideals of democracy which includes a deliberative and indeed representative process, the opportunity for people's views to evolve...

The Board determined that a plebiscite, or other statistically valid polling method, could be strong evidence to support an action of Council. However, following up on Professor Urbaniak's comments, the Board found that:

Such a plebiscite or polling is only valid if it has been preceded by an informed public debate.

Such a debate is needed to ensure that the voters are fully apprised as to the question and its consequences (at paragraph 149).

The Board found that the process followed by the CBRM was “deeply flawed” and did not help the community find common ground and reach a consensus. The Board noted that any proper study and public consultation process will be somewhat lengthy. In giving guidance to the CBRM for their future review, the Board stated:

The community must be properly consulted in an open dialogue as to the governance style and Council size. **The process of consultation must be led by Council, not directed, curtailed or stifled by it. By leading, Council should enter the discussion with an open mind. Council may want to consider the use of independent discussion leaders. Council may want to break the review process into smaller stages, involving discussion in topics such as the role of councillor, possible governance models, and the size of Council.** Council may want to consider, after an appropriate period of discussion, analysis, presentation and reflection, to consult the public on their views through a plebiscite.

This plebiscite, or other such polling device, should only occur after the public has been fully engaged and informed about the issues. If this consultation is conducted within the next year, Council could take the opportunity to conduct a plebiscite concurrently with the municipal election in October 2008. This would appear to be a less costly alternative to the telephone plebiscite suggested by VOTE, although any plebiscite will necessarily involve some costs. Regardless of which option is selected to consult the public, the question(s) should be sufficiently clear to provide meaningful guidance to the Council (at paragraphs 157, 158). [emphasis added]

The Board ordered that CBRM file a new application with the Board no later than December 31, 2010.

CONCLUSION

The Board has held that the *Municipal Government Act* places on Council the responsibility to determine the appropriate number of councillors in a municipality: it is not a determination that should be delegated entirely to members of the community. The Board expects that Council will engage in a discussion about the type of governance suited to the organization and the number of councillors required to adequately meet that model.

District boundary review process is a two-stage process: the first stage is evaluating the governance of the municipality and the associated number of councillors; the second stage is developing the district boundaries themselves. Both stages require a public consultation process.

The Board has also acknowledged the role of experts in helping Council determine what is best for its municipality. Robert Radchuck was called as an expert by Board Counsel in the 2004 HRM review. The CBRM review in 1999 also made use of a KPMG report. The Board recommends that Council rely on experts as well as senior staff to provide them with guidance, however, the ultimate decision is theirs to make. Council may retain experts in governance models and styles of Council and is not limited to experts on population numbers, distribution and communities of interest.