

DECISION

NSUARB-SB-12-03/M04878  
2012 NSUARB 111

**NOVA SCOTIA UTILITY AND REVIEW BOARD**

**IN THE MATTER OF THE EDUCATION ACT**



- and -

**IN THE MATTER OF AN APPLICATION** by the **SOUTH SHORE REGIONAL SCHOOL BOARD** to reduce the number of school board members from 10 to 6 and to amend the boundaries of the electoral districts

**BEFORE:** Roland A. Deveau, Q.C., Acting Vice-Chair

**COUNSEL:** **SOUTH SHORE REGIONAL SCHOOL BOARD**  
Judith Sullivan-Corney, Board Member  
Nancy Pynch-Worthylake, Superintendent

**HEARING DATE:** June 18, 2012

**DECISION DATE:** July 16, 2012

**DECISION:** **Application approved.**  
**Six electoral districts, each electing one member.**

## INTRODUCTION

[1] The South Shore Regional School Board (“Applicant” or “School Board”) applied to the Nova Scotia Utility and Review Board (“Board” or “UARB”) on March 20, 2012, to reduce the number of electoral districts and the number of school board members from 10 to 6 and, accordingly, to amend the boundaries of the electoral districts. In addition to the members elected from each electoral district, there is one African Nova Scotian board member elected at large and one First Nations’ representative appointed by the Minister. The latter two members are not under consideration in the application. The Applicant asks that the changes be implemented in time to take effect for the school board elections to be held in conjunction with the municipal elections slated for October 2012.

[2] Section 43 of the *Education Act*, S.N.S. 1995-96, c.1 (the “*Act*”) requires every school board to make an application to the UARB every eight years to confirm or change the number and boundaries of the electoral districts in the school district or school region. In June 2008, the UARB approved the School Board’s application for 10 electoral districts, when it conducted its last review under s. 43 of the *Act*.

[3] As noted in the Board’s 2008 Decision, this School Board has undergone some changes during its history. The School Board has, since 1992, been reconfigured four times by provincial legislation.

[4] Moreover, on November 29, 2011, the Minister of Education issued a letter which concluded, based on the findings of a report by Deloitte, that the South Shore Regional School Board “is a dysfunctional school board incapable of fulfilling its statutory obligations” (Undertaking U-1). Effective as of that date, the Minister directed

that the current School Board members cease to have the responsibilities and authority accorded to them under the *Education Act*. Further, pursuant to her authority under section 4 and subsection 68(2) of the *Act*, the Minister appointed Ms. Judith Sullivan-Corney “to carry out all the responsibilities and exercise all of the authority of the South Shore Regional School Board until the next school board election in October 2012.”

[5] Across Nova Scotia, for both practical reasons and to follow a direction in the *Education Act*, school board electoral districts are typically comprised of groupings of municipal polling districts.

[6] The present application was necessitated by the Board’s recent decisions resulting from applications by municipalities within the School Board’s area to change the number and/or boundaries of their municipal polling districts.

[7] In these municipalities, where councillors are elected by polling district, numerous district boundaries were changed (i.e., in February 2012, the Municipality of the District of Lunenburg changed the boundaries of its polling districts) and, in one case, the number of councillors changed (i.e., in September 2011, the Region of Queens Municipality reduced the number of councillors from 9 to 7). This meant the school board electoral districts had to be changed if they were to follow the boundaries of the municipal polling districts.

[8] Until recently, s. 42(1) of the *Education Act* provided that a school board must consist of a minimum number of eight elected school board members, and a maximum of eighteen. The School Board's present application, dated March 20, 2012, requested a reduction from 10 to 6 elected members (below the minimum statutory requirement of eight).

[9] The Board held a preliminary hearing by telephone on April 2, 2012, to canvass the appropriate hearing timeline to be scheduled for the School Board's application, noting that the UARB does not have the jurisdiction under the *Education Act* to consider the School Board's Preferred Option (i.e., six elected members) proposed in the application. If approved by the Board, this would result in a smaller school board than that permitted under the *Act*. Ms. Sullivan-Corney, the sole member of the present School Board, indicated that she had been advised by the Province that it intended to introduce an amendment to the *Education Act* to reduce the minimum size of an elected school board. She advised that the introduction of the proposed amendment was imminent. In the circumstances, the Board indicated it was prepared to hold the application in abeyance, pending the anticipated enactment of the amendment to the *Education Act*.

[10] On April 11, 2012, Bill No. 13 was introduced in the Legislature to amend s. 42(1) of the *Education Act*, reducing the minimum number of elected school board members required under the *Act* from eight to five. The Bill received Royal Assent on May 17, 2012.

[11] On May 25, 2012, the UARB issued its Notice of Hearing, which was advertised in the Liverpool Advance on May 29 and June 5, 2012, and the Bridgewater Progress Bulletin on May 30 and June 6, 2012.

[12] The Notice invited the public to advise the Board of their objections in advance of the hearing. The Board received 20 letters of objection. There were also five requests to speak at the hearing. The hearing was held in Board Room B at the offices of the South Shore Regional School Board in Bridgewater, Nova Scotia. The

Applicant School Board was represented by Ms. Sullivan-Corney, sole Member of the School Board, and Nancy Pynch-Worthylake, Superintendent, who both provided evidence to the Board.

## EVIDENCE OF THE APPLICANT

[13] Table 1 shows the School Board's current 10 electoral districts, along with an estimate of the population and voter statistics at the time of the most recent School Board boundary review in 2008:

Table 1 – Current Districts			
Electoral District	Number of Electors	Amount < or >	
		Percentage Variance	
		#	%
1	3,056	(1,281)	(29.5%)
2	2,987	(1,350)	(31.1%)
3	2,789	(1,548)	(35.7%)
4	5,942	1,605	37%
5	4,836	499	11.5%
6	4,950	613	14.1%
7	4,505	168	3.9%
8	4,454	117	2.7%
9	5,240	903	20.8%
10	4,610	273	6.3%

Total population:	58,809
Total number of electors:	43,369
Total number of students:	7,882
Average number of electors per electoral district:	4,337

[Application, Exhibit S-1, pp. 4-5]

[14] It was noted in the present application that school enrolment has decreased by over 10% since 2008.

[15] The application described the process used by the School Board to develop the proposed number of electoral districts and their boundaries.

[16] On January 28, 2012, the School Board engaged an outside consultant to develop and present options for a change in the number and boundaries of electoral districts.

[17] The consultant returned with various options, including options having 5, 6, 7, 8, 9 and 10 districts.

[18] The options were presented for public comment and consideration. The public consultation process was described in the application as follows:

Public Consultation

Letters from the Board were distributed to staff, students, families, School Advisory Councils, Home & School Associations, and others in the community. Public consultation session dates and locations were posted on the school board website two weeks in advance of the first session. Responses were invited from local government, school communities, and the public.

Public consultations were held in Bridgewater on February 20, 2012, in Chester Basin on February 22, 2012, and in Liverpool on February 23, 2012. Options were also posted to the school board website, with comments, responses and other options accepted until March 2, 2012. In total, 18 members of the public provided feedback on the options presented.

Forty-three people attended public consultation, including twenty (20) at Bridgewater, fifteen (15) at Chester Basin and seven (7) in Liverpool...

[Application, Exhibit S-1, p. 10]

[19] The public consultation identified various concerns, both general and specific, with the options presented to the public.

[20] Following the three public consultation sessions, the School Board directed the consultant to amend and refine the number of options based on the public feedback. Four options were presented to the School Board for final consideration, including 5, 6, 7 and 9 district options.

[21] At a Special Meeting of the School Board on March 7, 2012, it resolved to propose three options to the Nova Scotia Utility and Review Board, ranked by order of preference.

[22] The application, dated March 20, 2012, was filed March 23<sup>rd</sup>. The application included the Preferred Option (six districts), the Secondary Option (seven districts), and the Tertiary Option (nine districts). The latter Option, being an option having nine electoral districts, was the only option meeting the then current requirements of the *Education Act* with respect to size. The Preferred and Secondary Options, proposing six and seven districts, respectively, did not meet the requirements of the *Education Act* existing at the time.

[23] With the enactment of the amendment to the *Act* in May 2012, all three options now comply with the size requirements in the statute.

[24] The Preferred Option submitted by the School Board proposes six electoral districts enumerated in Table 2 (the Municipality of the District of Lunenburg is referred to as "MODL"):

Table 2 – Preferred Option				
	School Pop'n	Electors	Variance	% Var
Region of Queens	1,370	8,271	801	11%
MODL 5, 6, 7, 9	722	6,444	(1,026)	(14%)
Town of Bridgewater	909	5,942	(1,528)	(20%)
MODL 2, 8, 10, 11, 12	2,713	8,412	942	13%
MODL 1, 3, 4 + Towns of Lunenburg and Mahone Bay		7,464	(6)	0%
Mun. of the District of Chester	1,357	8,286	816	11%

Total population:	58,131
Total number of electors:	44,819
Total number of students:	7,071
Average Number of Electors per Electoral District:	7,470

[Application, Exhibit S-1, p. 39]

[25] While the School Board requests the Board to approve the Preferred Option (i.e., six elected numbers), it also forwarded the Secondary and Tertiary Options for the Board's consideration.

[26] The Secondary Option, which proposes a reduction from 10 to 7 elected members, was endorsed by the Town of Bridgewater during the School Board's public consultation. This Option respects the  $\pm 10\%$  variance, except for one electoral district (i.e., the district comprised of Queens' districts #6 and 7, together with MODL districts #8, 10 and 12, would have a variance of 21%). The Bridgewater electoral district would have a variance of -7%.

[27] The Tertiary Option would see a reduction from 10 to 9 elected members. The Town of Bridgewater would have a variance of 19%. One other electoral district would exceed  $\pm 10\%$  (i.e., the district comprised of MODL districts #1 and 2 and the Town of Lunenburg would be at 11%).

[28] In conducting its review, the School Board was mindful that relative parity of voting power is an important factor to address. It sought to improve the large variances that existed with the 10 member School Board. The School Board's application states that population density and municipal polling district boundaries cause at least one electoral district in each configuration of school board districts to exceed the  $\pm 10\%$  variance, but the proposed variances are much improved over the existing electoral districts.

[29] In setting the boundaries for the electoral districts, the School Board was also cognizant of the revised municipal polling district boundaries.



[30] Ms. Sullivan-Corney testified that one of the factors which was considered in preparing the application was the "High School and Feeder System Alignment". The general approach taken to develop scenarios, with this factor in mind, was described in the application filed with the Board:

Eighteen percent (18%) of the general population and nineteen percent (19%) of the student population reside in the Region of Queens. An equal proportion resides in the municipality of the District of Chester. Both have at least one self-contained sub-system – with two smaller sub-systems serving disparate populations in Queens County. A general goal, then, was to provide each of these areas with approximately twenty percent (20%) of the board complement.

[Application, Exhibit S-1, p. 14]

In addition, Bridgewater students currently attend a self-contained sub-system consisting of Bridgewater Elementary School and Bridgewater Junior/Senior High School.

...

Options presented to the [School] Board approached school sub-systems in different ways, driven by the number of districts and the average voter density. When numbers forced expansion [of electoral district boundaries], beyond the boundaries of Queens County in the region's western third, original options matched [districts in Queens] first with District 12 in the Municipality of the District of Lunenburg, approximately half of which is part of the provincial riding of Queens. Public response was overwhelmingly opposed to this match, arguing a more authentic community of interest exists between North Queens County and the adjacent inland district of the Municipality of the District of Lunenburg.

The six-district...configuration identified by the [School] Board as the preferred option reflects most closely the catchment areas of high school feeder systems – sometimes referred to as 'sub-systems'. If the [School] Board had the freedom to place its boundaries where it best serves the school system, irrespective of municipal district boundaries, this configuration would closely approximate that map.

Because there is no effective way to balance voter parity in a seven-district...option, given the region's population density patterns and school-based communities of interest, the approach is to deliberately include more than one sub-system in a district area, where possible. This approach is validated by the expectation of regional representation explored in the Deloitte Report...

[Application, Exhibit S-1, pp. 14-15]

[31] With respect to the Deloitte Report, the application stated:

The Nova Scotia Department of Education engaged Deloitte Inc. consultants to review the performance of the regional school board elected in 2008. That report was critical of board members who acted more for local interests than for the interests of the school region at-large in certain mission-critical instances. This finding underscores the unique

nature of school board members – elected from a specific district as regional trustees or stewards.

[Application, Exhibit S-1, p. 15]

[32] In her testimony, Ms. Sullivan-Corney indicated that the Preferred Option (i.e., 6 elected members) best advances the objective of regional representation, which should help mitigate the concerns identified in the Deloitte Report. She added that the area covered by the South Shore Regional School Board is the smallest area of any school board region in the province.

[33] She testified that, during the public consultation, the public indicated that they wanted the School Board to focus on governance, rather than on local issues.

[34] In the end, she determined that the six-district elected member school board represented the best option for the region. She noted that there is public support for a reduction in the size of the School Board. The application concluded:

Public comment was, for the most part, supportive of a reduction in district members to facilitate more effective school system governance at the board table. In tandem with this comment was the observation that it would be most effective if the boundaries of the districts matched school sub-systems. This informs the selection of a six-district...option as the preferred choice. The [School] Board is confident this configuration is the best option for the region.

[Application, Exhibit S-1, p. 16]

## **SUBMISSIONS BY MEMBERS OF THE PUBLIC**

[35] Five members of the public made presentations to the Board at the public hearing. Four indicated they were former members of the School Board,

[36] The speakers making presentations to the Board included Karen Reinhardt, Margaret Forbes, Maxwell Rafuse, Herbert Seymour and Elliott Payzant.

[37] The speakers expressed common themes in their comments opposing the application.

[38] First, most of the speakers asserted that an application to significantly reduce the size of the School Board should not be made by a one-person appointed School Board. Some suggested such an application should be made by a larger, “democratically elected”, School Board, having members with first-hand knowledge about the commitment that is necessary to do the job of a school board member.

[39] Second, some expressed concerns with the process leading to the application. Ms. Reinhardt stated that the public was generally unaware of the boundary review, saying that the School Board did not widely publicize the review. There were no radio announcements and just a small article in the local newspaper. In her view, hand-delivered notices to the staff, students, families and school advisory councils, and publishing a notice on the School Board website, was not sufficient.

[40] Moreover, both Ms. Reinhardt and Ms. Forbes stated that the process occurred too quickly to properly consult the public and examine the issue.

[41] The speakers all stated that the proposed six-member School Board is too small. In their view, a larger School Board would allow a more thorough debate of the issues, with more diverse opinions at the table.

[42] Ms. Reinhardt submitted an informal public opinion survey conducted on the internet site “surveymonkey” (via email and Facebook), showing 75% of respondents support a 9-member School Board.

[43] They also stated that the School Board faces important issues, including a review of six schools in the region, a review of catchment areas, and a possible grade

reconfiguration as between junior and senior high schools. In this context, they suggested that it would be appropriate to delay any significant reduction of School Board members until these issues are resolved.

[44] The Board also received 20 letters of comment from members of the public. The letters all opposed the School Board's proposed reduction to six elected members. The letters all supported the option for nine elected members.

## FINDINGS

[45] Section 44 of the *Act* sets out the Board's powers and the matters which it must consider in determining the number and boundaries of electoral districts. It reads as follows:

**44 (1)** In determining the number and boundaries of electoral districts, the Utility and Review Board shall make such decision as in its opinion is just, and is not restricted to the proposal advanced by a school board in its application.

**(2)** The Utility and Review Board may reject an application and require a school board to reapply within such time as the Utility and Review Board directs, and may give such directions for the re-application as the circumstances of the case dictate.

**(3)** In determining the number and boundaries of electoral districts, the Utility and Review Board shall give consideration to

- (a) subject to subsection 13(6), ensuring as nearly as practical equal numbers of electors in each electoral district;
- (b) population density;
- (c) distribution of the school-age population;
- (d) the principal language of instruction of the school board and language of instruction of the school population in areas of the district; and
- (e) any other relevant matter that in the opinion of the Utility and Review Board affects the necessity, expediency or justice of the order sought.

(4) The Utility and Review Board shall, in setting the numbers and boundaries of electoral districts, have regard to the existing boundaries of polling districts and wards.

[46] Note that subsection 13(6) referred to in subsection 3(a) above only applies to the Conseil scolaire acadien provincial.

[47] As noted earlier in this Decision, s. 42(1) of the *Act* now provides that school boards must have no fewer than five elected members, and no more than eighteen.

[48] Before turning to the substantive issues in this application, the Board wishes to comment on two “process” matters raised by the speakers at the public hearing.

[49] First, some of the speakers suggested that an application to significantly reduce the number of School Board members should not be made by an unelected one-person school board. The Board sees no merit in this statement. As noted earlier in this Decision, Ms. Sullivan-Corney is the duly constituted School Board under the *Education Act*. In her appointment by the Minister of Education, she was afforded all the powers and authority vested in school boards under the *Act*. Moreover, she was assisted in her review by a consultant which she retained to prepare options to present to the public. She then instituted a public consultation process and consulted with all municipal governments in the region. Further, the public had another opportunity to present their views as part of this Board’s public hearing process.

[50] The Board considers that Ms. Sullivan-Corney took all reasonable and prudent actions that were appropriate in conducting the review of the electoral districts, in a process similar to that adopted by other school boards conducting similar reviews.

There is no reason whatsoever to accord less weight, or no weight at all, to the application simply because the Applicant School Board consists of only one member.

[51] Some of the speakers were also critical of the methods used by the present School Board to notify the public of the boundary review conducted in advance of the application to this Board. Again, the Board sees no merit in this assertion. As noted by Ms. Sullivan-Corney in her testimony, she and her staff used the same notification process for the boundary review as is used for all other instances in which the School Board must communicate with its stakeholders. Notices were provided to staff, parents and school advisory councils. Further, the School Board consulted with local governments and Home and School Associations. The School Board also posted its public consultation process on its website.

[52] The Board will now address the substantive elements of the application.

[53] A review of past municipal polling district and school board electoral district decisions shows that the primary consideration in these reviews has been voter equality. In emphasizing the need to achieve relative parity of voting power, the Board has been influenced by recent court cases and provincial legislation.

[54] Until its decision in *Re Halifax Regional Municipality*, [2004] NSUARB 11, variances in electoral population up to  $\pm 25\%$  were accepted by the Board in reviewing the number and boundaries of municipal polling districts. Since s. 44(3)(a) of the *Education Act* directs the Board to give consideration to "ensuring as nearly as practical equal numbers of electors in each electoral district", the Board extended similar treatment to its assessment of electoral districts of regional or district school boards.

[55] However, as noted in the above HRM Decision, the Board now expects variances for relative parity between polling districts to be within  $\pm 10\%$ , only allowing variances up to  $\pm 25\%$  in extraordinary circumstances where the municipality (or, in this case, the School Board) provides a detailed written explanation confirming that factors such as community of interest or geography clearly justify the necessity of an increased variance in a polling district (see paragraphs 67 to 76 and paragraph 82 of the HRM Decision for the discussion respecting this issue). In such cases, it is incumbent upon an affected municipal unit to clearly explain the reasons for such a high variation. The greater the variation, the greater the burden to justify the high variance from the average number of electors. Even with very extensive and detailed justification, the Board will approve a variation of  $\pm 25\%$  or more only in very extraordinary circumstances. While the Board does not see this as a significant departure from its earlier decisions, it expects municipalities and school boards to be more vigilant in targeting variations of 0%, rather than "defaulting" to the outer fringes of the  $\pm 25\%$  range.

[56] The Board recognizes that there are several differences between an electoral district for the election of a school board member and a polling district in a municipality for the election of a municipal councillor. Section 42(1) of the *Act* requires that every school board have between five and eighteen members, while the *Municipal Government Act* does not specify any minimum or maximum number of councillors for each municipal unit. In most instances, a school board member represents more voters than does a municipal councillor in the same general area. Further, the duties of councillors have become full-time for many, while school board members invariably

carry out their school board duties in addition to other activities including, for some, full-time employment.

[57] Nevertheless, while reasonable departures from the  $\pm 10\%$  guideline may be justified in a few instances, the Board is of the opinion that, for the most part, the factors enumerated in s. 44(3) can be adequately recognized and accommodated within the guideline. However, given the large size of some electoral districts across the province, and the relatively larger electorate represented by school board members in comparison to municipal councillors, the Board may sometimes be more lenient in applying the  $\pm 10\%$  guideline as it relates to school boards. That having been said, the Board recognizes the efforts of the Applicant in the present application of achieving variances which are significantly improved over the variances in the existing electoral districts.

[58] As stated above, the Board is of the opinion that the primary consideration in setting the boundaries of the electoral districts should be equality of voting population, subject to an appropriate variation to recognize differences in population density, community of interest considerations and geography.

[59] The Board finds that in rural areas, especially when there are many different communities of interest, it is difficult to get voter parity within the  $\pm 10\%$  guideline, particularly when concentrated urban areas (i.e., towns) are located adjacent to the rural areas. The task is rendered even more difficult in the present case, given the large geographic areas covered by rural electoral districts in the Region of Queens. Further, Bridgewater, which has a negative variance, it is not appropriate to add



adjacent rural communities because it would not be consistent with communities of interest.

[60] Section 44(4) of the *Education Act* also requires the Board to have regard to "existing boundaries of polling districts and wards". This, in essence, forms an important basis for the present application. If the proposed electoral district boundaries are not consistent with municipal polling district or ward boundaries, it can cause voter confusion and would likely increase the cost of the school board elections. The Board is satisfied that the proposed boundaries in this application are reasonable and appropriate.

[61] The Applicant School Board has submitted that the primary basis for its application for six elected districts is that it will assist the new School Board members to adopt a broader regional prospective in reviewing policy issues facing the School Board. The Board notes that this addresses a major problem which was identified in the Deloitte Report, and by the Minister (Undertaking U-1), with respect to the 10 member School Board.

[62] As noted earlier in this Decision, and in the application, this particular School Board has already undergone four structural changes, by legislation, since 1992. Thus, it is apparent that there has been a continuing attempt to identify an appropriate local model to meet the region's needs. The Minister's intervention in November 2011 suggests that the status quo is not responsive to the proper governance of important regional issues.

[63] The Board also notes that there is public support for a reduced School Board size. In fact, the letters of comment filed as part of this Board proceeding, and

the speakers at the public hearing, all supported a reduced size for the School Board, albeit from 10 to 9.

[64] Further, the Board notes that school enrolment in the School Board's region has decreased by over 10% since 2008. Moreover, the area covered by the South Board is the smallest area of any school board region in the province.

[65] The Applicant School Board also carried out an extensive review to determine the appropriate number of members. It engaged a consultant to carry out a review and present options. The School Board also conducted a public consultation, holding three meetings in different parts of the region, and allowing letters of comment. Many members of the community accepted this opportunity from the School Board to provide their input in advance of this application. The School Board also consulted with all municipalities and towns in the South Shore region.

[66] While the Board recognizes that various options are possible with respect to the appropriate number of school board members, it accepts the reasons submitted by the Applicant School Board for reducing the number of School Board members from 10 to 6.

[67] Further, there will invariably be different configurations of electoral district boundaries that may be possible, regardless of the number of electoral districts. The Board is satisfied that the proposed boundaries in this application are reasonable in representing the communities of interest in the region.

[68] Taking into account all of the above, the Board approves the application of the School Board to reduce the number of members from 10 to 6. It also approves the boundaries of the electoral districts as presented in the application.

[69] The Board notes that the next school board boundary review under the *Education Act* will be in 2015. At that time, the School Board will have an opportunity to review the current number and boundaries of electoral districts and to determine if any changes or adjustments should be made.

[70] An Order will issue accordingly.

**DATED** at Halifax, Nova Scotia, this 16<sup>th</sup> day of July, 2012.

A handwritten signature in dark ink, appearing to read "Roland A. Deveau", is written over a horizontal line.

Roland A. Deveau