

**THE BOUNDARY ADJUSTMENT PROCESS:
THE CASE OF ARBITRATION
IN THE GREATER LONDON AREA**

by

Bruce E. Curtis
Department of Political Science

Submitted in partial fulfilment
of the requirements for the degree of
Master of Public Administration

**FACULTY OF GRADUATE STUDIES
THE UNIVERSITY OF WESTERN ONTARIO
LONDON, ONTARIO
AUGUST 1992**

© Bruce E. Curtis 1992

TABLE OF CONTENTS

| | |
|--|----|
| TITLE PAGE | i |
| TABLE OF CONTENTS | ii |
| LIST OF FIGURES | iv |
| LIST OF APPENDICES | v |
| CHAPTER 1 - INTRODUCTION | 1 |
| 1.1 General Background and Nature of the Problem | 1 |
| 1.2 Boundary Adjustment Process in Other Jurisdictions | 4 |
| 1.3 Boundary Adjustment Process in Ontario | 7 |
| 1.4 Objectives of this Study | 11 |
| Chapter 2 - BOUNDARY ADJUSTMENTS IN THE GREATER LONDON AREA | 13 |
| 2.1 Brief History of London Annexations to 1961 | 13 |
| 2.2 The 1961 London Annexation | 16 |
| 2.3 Proposals for London Annexation 1981 and 1988 | 18 |
| 2.4 Examination of the Negotiation Process 1988-1991 | 20 |
| CHAPTER 3 - BOUNDARY ADJUSTMENT BY ARBITRATION | 28 |
| 3.1 Ministerial Initiation of the Arbitration Process | 28 |
| 3.2 The Arbitration Process | 32 |
| 3.3 Analysis of the Arbitration Process | 36 |
| 3.4 Comparison of Arbitration Process with Plunkett and Lightbody Study | 41 |

CHAPTER 4 - SUMMARY AND CONCLUSIONS 46

4.1 **Reaction to the Arbitrator’s Report
and Implementation Problems** 46

4.2 **Summary of Analytical Findings** 49

4.3 **Study Conclusions** 52

APPENDICES 55

BIBLIOGRAPHY 59

LIST OF FIGURES

| FIGURE | DESCRIPTION |
|--------|--|
| 1 | Location of Study Area 14 |
| 2 | London Annexation History 17 |
| 3 | Chief Negotiator's Possible Solutions 26 |

LIST OF APPENDICES

| APPENDIX | DESCRIPTION |
|----------|---|
| I | Terms of Reference, Greater London Area Arbitration Process 55 |

CHAPTER 1

INTRODUCTION

The words "boundary adjustment" as used in Ontario are simply a euphemism for the word "annexation", which is the often controversial process whereby a municipality expands its boundaries to gain jurisdiction over land from surrounding jurisdictions. Not only are annexations controversial, but many times they are opposed and disputed by the residents and politicians of the area to be annexed, and they tend to become long and protracted battles between the competing communities. While annexations occur most commonly around large and fast growing urban centres, Sylvia Lewis has aptly described their likelihood as, "Like Death and taxes, annexation battles are a certainty for every planner - at least in states where there are still patches of unincorporated land to fight over" (Lewis, 1989, 8).

1.1 General Background and Nature of the Problem

As alluded to in the introduction, annexations (used in this paper interchangeably with boundary adjustment) tend to be contentious in all but the smallest of land transfers from one jurisdiction to another. Residents and politicians of a community being annexed

view the initiative as a challenge to their local sovereignty and a direct invasion to gain control over the land and tax base. This competition for land to expand boundaries leads to disputes between municipal governments in the adjacent communities, and creates a situation where the one side which expands its boundaries is perceived as the winner and the other as the loser.

The creation of this confrontational or adversarial forum in which the communities battle with each other can consume large amounts of municipal time and financial resources. Whether it be through formal litigation, tribunal hearings, mediation/negotiation, investigatory commissions, or arbitration, the resolution of inter-jurisdictional boundary disputes requires the preparation of numerous studies and their presentation at various forums. This is costly in the use of professional staff time and resources and in hiring outside consultants and legal assistance, as well as costs borne by the overseeing senior level of government (e.g., province or state) for the tribunals, negotiations, etc.

In addition of the hard costs noted above, the process also exacts a toll on the communities involved by adversely affecting the relationship between the jurisdictions. Any existing harmony between communities can turn to bitterness and divisiveness as they become adversaries in a battle to protect their individual interests. The process of mending these torn relationships may take many years (if they are ever truly forgotten and forgiven) and the lost benefit of cooperation in the interim is never realized.

So why are annexations permitted to occur if they create adversity and disharmony among adjacent communities? The simple answer to this is, that by not allowing the annexation it may result in even greater costs to the subject communities through lost growth and development opportunities. Beaton, in his work on annexation noted an Ontario Municipal Board decision which explains the need for annexations:

"A municipal corporation does not exist for its own sake. It is created primarily to provide and maintain essential local services required by the area. If conditions change, to the extent the municipal services required can be more efficiently and economically provided by an adjoining municipality, nothing is lost or gained except the duty and responsibility of providing municipal services. In the opinion of the Board, the question is not whether one municipality or the other has the greater need of the area in question. It is much more a question whether the area needs one of the municipalities more than the other" (Beaton, 1967,6).

There are, however, other reasons why annexations occur. In some cases municipalities have a legal right to affect their own future and prosperity (such as home rule cities in the United States). In other cases the dominant city in a region may face growth pressures to the point where growth and development are imminent, and it becomes a question of which jurisdiction can best provide for the growth. In such cases it becomes a matter of analyzing the public administration and community planning issues to determine the best long term solutions to the dispute.

Additional reasons for considering annexation and/or municipal amalgamation are the breakdown of local government structures, the duplication of such government in a common region or area, and the need to remedy taxation, assessment and financial problems. While regional and metropolitan government restructuring has addressed, or provided a means for addressing, boundary disputes, there are still areas which experience such governmental structural problems and are in need of resolution. In some cases municipalities become overextended in their financial commitments because they provide services to areas which are well beyond their jurisdictional right to tax.

In summary, this issue of annexation is one of controversy where the parties involved become adversaries in an often long process to settle their dispute. Regardless of the reasons for initiating the annexation, the matter must be resolved. This study explores the situation in one of these cases, the Greater London Area, and analyzes the processes used to resolve the dispute.

1.2 Boundary Adjustment Process in Other Jurisdictions

Later in this chapter the boundary adjustment process in Ontario will be described. The purpose of this section, however, is to discuss the various methods of handling boundary adjustments in general terms with reference to several locations outside of the immediate study area of Ontario.

In the United States, some 2,000 annexations occur each year, and if field reports are correct, many of them are hostile takeovers (Lewis, 1989, 9). While most annexations tend to occur around major urban centres, the likelihood of such battles are reduced in those states which provide cities with extraterritorial jurisdiction over surrounding areas. Such extraterritorial controls include: extraterritorial zoning (North Carolina), extraterritorial subdivision regulation (Texas), and spheres of influence (California). One of the foremost researchers of American annexation practices is Colorado based land use lawyer, Eric Damian Kelly. It is Kelly's suggestion that jurisdictions without these controls are sometimes forced into ridiculous defensive annexations just to keep their options open (Lewis, 1989, 8).

As a possible solution, some states are exploring intergovernmental agreements to settle boundary disputes. Leaders in this area are Colorado and Illinois. In January of 1989 Arapahoe County signed a 10 year agreement with the City of Aurora (a suburb of Denver) that establishes the boundaries of the city's future annexations, and committed both municipalities to a joint comprehensive plan for the unincorporated areas. Elsewhere in Colorado there are proposals for intergovernmental agreements that would set up joint planning commissions to work out annexation issues.

The most notable of intergovernmental agreements in the U.S. is the TECHY Area Land Use and Boundary Agreement adopted in July 1975 in northern Illinois. The

Agreement settled annexation boundaries and land uses, and attempted to equalize costs and revenues to the three villages involved on the north border of Chicago. It was a near perfect solution at the time, and one which allowed the Northeastern Illinois Planning Commission to distribute costs and benefits equally, and achieve some measure of comprehensive planning. Problems occurred 11 years later, however, when the largest land owners (two Catholic orders) decided to develop their land with more intensive office-commercial uses, and redraw the boundaries to suit the most cooperative village. The TECHY agreement is now void, but valuable lessons were learned. The agreement was premature because it preceded development by so many years that no one could have anticipated the increase in land prices that ultimately changed the form of development that would most likely occur. Also, the agreement was not binding on the villages, although it was agreed to by the councils of the day. And most importantly, the municipalities have come to the realistic understanding that their land use decisions have regional impacts which cannot be ignored (Kamin and Ibota, 1990).

Encouraging intergovernmental agreements is the aim of the State of Colorado, which uses two principal statutory sources for intergovernmental cooperation on growth and land use: the general intergovernmental contracting statutes and the Local Government Land Use Control Enabling Act. These statutes "state a purpose of permitting and encouraging governments to make the most efficient and effective use of their powers and responsibilities by cooperating with other governments" (Griffiths, 1988, 17). While such agreements are becoming more popular among Colorado municipalities, including home rule authorities, they remain relatively unique and untested in the State's appellate courts.

Dealing with the annexation problems in the eastern U.S. has taken an interesting turn in Ohio. Since 1986, Ohio law has required annexing municipalities to tie expansion

of their political boundaries to the expansion of their school district boundaries. Suburban communities around large cities such as Columbus are often opposed to inclusion in the larger city school districts because they fled the city in the late 1970s to avoid court-ordered busing. Therefore, suburban councils and residents initiate mergers with other suburban communities in order to keep the central city and its school districts out of their communities. Such actions severely limit the growing central city's options.

In Canada, the situation is not quite so variable as in the U.S. because the constitutional status of the municipalities is less variable. In all provinces "they exist as the subjects of their respective provinces with responsibilities tightly defined by statute and provincial regulations" (Plunkett and Lightbody, 1982, 208). Various methods have been used in the past to address boundary disputes and the often accompanying reorganization of local government. These range from the royal commissions (1976 Robarts Commission in Toronto) and provincial task forces (such as the one which created Winnipeg unicity) to the administrative tribunals (Ontario Municipal Board and Local Authorities Board in Alberta) and formalized municipal boundary negotiations process.

Usually, the process in Canada has been one of Provincial discretion after some form of fact-finding or administrative hearing. The provincial legislatures have been unyielding in the retention of their constitutional supremacy which is characterized by rigid control and guidance exerted through municipal affairs ministries or departments. The use of extraterritorial jurisdiction is relatively rare in Canada. Similarly, intergovernmental agreements are less commonly used in Canada than in the United States. Agreements are common in Quebec, and have been experimented with in western Canada and in Ontario, but the provincial governments have generally not been very supportive of them.

The use of district or regional municipalities (British Columbia, and Ontario) and

other variants of local government restructuring (Winnipeg and Edmonton) have been one method of addressing boundary disputes while also resolving other structural problems in local government. Municipal mergers, amalgamations and partial annexations have accompanied municipal reorganization to provide for long term comprehensive planning and logical growth around major urban centres with the benefit of full municipal services. The boundaries are usually drawn to provide sufficient growth without boundary adjustment for many years.

No attempt has been made here to provide an exhaustive list of options to resolve municipal boundary disputes in other jurisdictions. Rather, the foregoing is intended simply to provide a sampling of the methods used elsewhere to handle the problem, and to furnish a background to understand the Ontario situation.

1.3 Boundary Adjustment Process in Ontario

Until recently, boundary adjustments and disputes in Ontario have had a long history of being settled by a quasi-judicial independent board, known as the Ontario Municipal Board (OMB). This tribunal has accumulated judicial and regulatory functions over the years as the municipal system has become more complex. Originating as the Ontario Railway and Municipal Board in 1906, becoming the Ontario Municipal Board in 1932, and assuming its modern form and purpose in 1954, this quasi-judicial independent administrative tribunal has been a device for the provincial government to exercise control over municipalities in an indirect form (Plunkett and Lightbody, 1982, 208).

Prior to 1981, the annexation process was exclusively the purview of the OMB. The relatively straightforward process was initiated by the municipality desiring annexation passing a by-law thus stating, and requesting a hearing before the OMB. The requisite by-

law was forwarded to the OMB along with explanatory and supporting documentation. The Board arranged a hearing date at which all concerned parties were given an opportunity to present the facts of the case, and arguments to support or oppose the requested annexation. The Board then had a responsibility to adjourn and consider the facts, and render a decision approving or denying the annexation, or imposing a compromise solution.

Over the years the OMB dealt with a large number of annexation applications, some large and some small, some of only a few days duration, and other lasting many weeks. There was growing discontent with the process, resulting in representations from the various components of the Association of Municipalities of Ontario (AMO) and an Inter-Association Working Group in the late 1970s. Specifically, there were four critical defects identified in the annexation process at the time:

- 1) It was based on confrontation.
- 2) It was expensive.
- 3) It had a bitter and divisive effect on previously harmonious communities.
- 4) It was very time consuming. (Ministry of Intergovernmental Affairs, 1980, 3)

The Minister of Intergovernmental Affairs responded to these concerns in August 1979, at the AMO Conference, by announcing a pilot process to test a better method of resolving disputed annexations. The object of the pilot process was to allow municipalities an opportunity to settle their dispute without creating the animosity, divisiveness and bitterness which accompanied an OMB annexation hearing. The test pilot program involved the municipalities of: the City of Brantford, Township of Brantford, and County of Brant, one of the most problem-ridden areas of intermunicipal boundary disputes in the province at the time. The new process was designed to :

- 1) Emphasize negotiation and agreement.
- 2) Provide for mediation of certain unresolved aspects of an otherwise agreed annexation.
- 3) Allow for an efficient, impartial and quick arbitration of the issues on which agreement could not be reached. (Ministry of Intergovernmental Affairs, 1980, 3)

The Brantford pilot program did reach a negotiated settlement and formed the basis of a case study to assess the negotiation process. The Ministry of Intergovernmental Affairs saw some distinct advantages in negotiation over the OMB hearing process. Some of these advantages are listed below:

Advantages of the Boundary Negotiation Process

- 1) **Broader Mandate:** Since an OMB panel can only hear evidence pertaining to the annexation requested, they are limited in considering other matters of dispute that may exist. The negotiation process does not have this restriction and allows a broader scope of consideration for matters or solutions not previously considered.
- 2) **Compromise VS an "All or Nothing" Result:** An OMB decision generally results in one party emerging as the winner and one the loser. The negotiation route is based on compromise solutions, permitting all parties to gain some benefits and reduce the chances of a winner-takes-all outcome.
- 3) **Cost Factor:** Substantial tax dollars (e.g., millions of dollars in some cases) are spent by the applicant and respondent in the OMB hearings to engage consultants and legal counsel to make their case in the quasi-judicial setting, and even more can be spent on appeals to the courts. The negotiation process requires research to be carried out and paid for jointly by the participating municipalities. This and the fact that legal representation is not necessary at the negotiation table, greatly reduces the costs incurred.
- 4) **Tailor-Made Solution:** The negotiation process allows tailor-made solutions based on local perspectives (within provincial guidelines). The OMB may look to precedents and have regard for other decisions which do not fit the local circumstances.
- 5) **Opportunity to Reflect:** Because the negotiation process is extended over a significant period of time, participants have an opportunity to reflect on tentative solutions and the possibility of re-working them.
- 6) **Long Lasting Solution:** Through the use of a moratorium on future annexations, restrictive development zones, etc. and settlement agreements, there is a greater likelihood of long term solutions being found.
- 7) **Unifying Effect:** As an aftermath to negotiations, there is potential for a spirit of cooperation, goodwill and understanding, as opposed to the OMB hearing legacy of bitterness and rivalry that is not conducive to good government for the broader community.
- 8) **Room to Disagree:** The negotiation process allows the parties to agree to disagree, and seek a consultant's report on the matter, or enter into binding arbitration. In comparison, the OMB must provide a definitive judgement on those matters it is hearing.
- 9) **Public Input:** The negotiation process could provide sufficient opportunity for public input at various stages as opposed to the intimidating atmosphere of judicial proceedings and the associated formalities and need for legal counsel.

In its assessment of the pilot project the Ministry also noted some disadvantages.

Disadvantages of the Boundary Negotiation Process

- 1) **Compromise at the Expense of Public Policy:** The need to achieve compromise may work against the interests of the residents of one area or the broader community; the OMB can make objective assessments of what is best for the overall interests of the greater area.
- 2) **Time Commitment:** The municipal councillors on the negotiating committee must be prepared to commit a significant amount of time over a long period. With OMB hearings it is usually staff and hired professionals who are involved at hearings.
- 3) **Availability of Human Resources:** A negotiated settlement could be more reflective of the relative abilities of the negotiator rather than the merits of the arguments, and the level of talent on municipal council (from which the negotiators are chosen) may vary from group to group.
- 4) **Due Process:** Property owners affected by a negotiated settlement may feel deprived of due process of law if not given an opportunity to plead their case before some type of judicial body. (Adapted from the August 1980 Ministry Report, "An Examination of the Brantford-Brant Local Government Pilot Project: An Alternative Annexation Process").

As a result of their review of the Brantford experience, the Ministry favoured the implementation of a negotiation process to resolve future annexation disputes. One of the strongest arguments for negotiated settlements was a philosophical one which suggests that a solution arrived at by local people held accountable for that solution is preferred to one determined by a disinterested individual or panel from the OMB (Ministry of Intergovernmental Affairs, 1980, 99).

Subsequent to the successful negotiation of a settlement to the Brantford-Brant dispute, and completion of the pilot project, the Ministry of Municipal Affairs (as the Ministry of Intergovernmental Affairs had become) began investigating legislative changes to establish a statutory procedure whereby all future boundary adjustments would be negotiated. As a result, the Ministry introduced the Municipal Boundary Negotiations Act, 1981. This new Act replaced most of the annexation and all of the amalgamation procedures formerly in the Municipal Act, as a process that would be less costly, less legalistic, and less adversarial, and that could provide a greater degree of accountability by

municipal councils who are responsible for governing their communities. It should be noted that the Act does not apply to metropolitan, regional, or district municipalities (or the County of Oxford) except where the Minister deems it to be minor in nature, and does not apply to unorganized territory in Northern Ontario.

The essence of the boundary negotiation process is that it focuses on municipal council representatives of two or more neighbouring municipalities negotiating and arriving at a resolution to their boundary related issues. The key elements of the process are as follows:

- i) Orientation - explanation of how the process works and what can be expected.
- ii) Application - a by-law is required to initiate the procedure.
- iii) Fact Finding - identification of the issues.
- iv) Negotiation - inter-municipal discussion of the issues with a provincial negotiator.
- v) Recommendation for Agreement - a recommendation for agreement developed and signed by negotiating committee.
- vi) Public Consultation - opportunity for public consultation.
- vii) Council Consideration - council reviews agreement and informs Minister of its position.
- viii) Implementation - Minister requests Lieutenant Governor-in-Council to implement agreement by an Order in Council.

(Adapted from "A Guide to the Municipal Boundary Negotiation Act", MMA, 1985)

The process of annexation may not be quite so simple and straight forward as it would appear from the foregoing. However, the main steps are outlined and the Act, and the associated guide provides substantial detail on the particulars of the required procedures. This discussion is elaborated upon in the latter part of Chapter 2, which examines the process as it occurred in London.

1.4 Objectives of this Study

Clearly, and most importantly, the reader should understand the aspect from which this study was written. The study is an analysis of the process which occurred in the Greater London Area from a public administration perspective. The study is neither an assessment

of the merits of the outcome, nor an analysis of the arbitrator's decision and its factual components. Further, this study is not an assessment of the power of the various actors or stakeholders involved (e.g., politicians, developers, the public) in the process. Process and procedure are the fundamental matters under consideration, and some determination of their appropriateness in the case being studied.

The objectives of this study are three fold. First, the Greater London Area annexation will be reviewed to analyze the processes which occurred (negotiation and arbitration) to determine their effectiveness and appropriateness in resolving the Greater London Area boundary problems. Second, suggestions will be proposed for improving the process and its future application. Such suggestions will obviously be based on the London case, but will have broader applicability to the nature of the problems encountered. Third, and of lesser practical concern, but of theoretical or academic concern, will be an attempt to relate and compare the process to a study of a similar massive annexation by the City of Edmonton in 1981. This is one of very few academic reports on annexation, and one which used a set of criteria to assess the process on whether or not it was an effective procedure. Assessment and comparisons based on the criteria will be discussed.

CHAPTER 2

BOUNDARY ADJUSTMENTS IN THE GREATER LONDON AREA

The position of London as a regional centre for Southwestern Ontario has contributed to its regular and consistent growth over the past 150 or more years. The spatial growth of the City has been accomplished by way of annexation, having its boundary adjusted some seventeen times since its inception as a village in 1840. This Chapter reviews briefly, the history of London's past annexations, and examines the negotiation process of 1988-1991 which was intended to settle the most recent boundary controversy.

2.1 Brief History of London Annexations to 1961

Having discussed in general why municipalities annex, and the various means of handling boundary disputes, it is important to acknowledge the issues pertinent to London. The original town plot was surveyed in 1826 and the settlement was governed by London Township until 1840 at which time self-government was established and the boundaries extended east to Adelaide Street and north to Huron Street (the Thames River being the westerly and southerly boundaries). The growth of the town (becoming a city in 1855) continued steadily for many years as did the unincorporated villages around it. In 1885, the City expanded eastward again, appropriating the Village of East London. This was largely

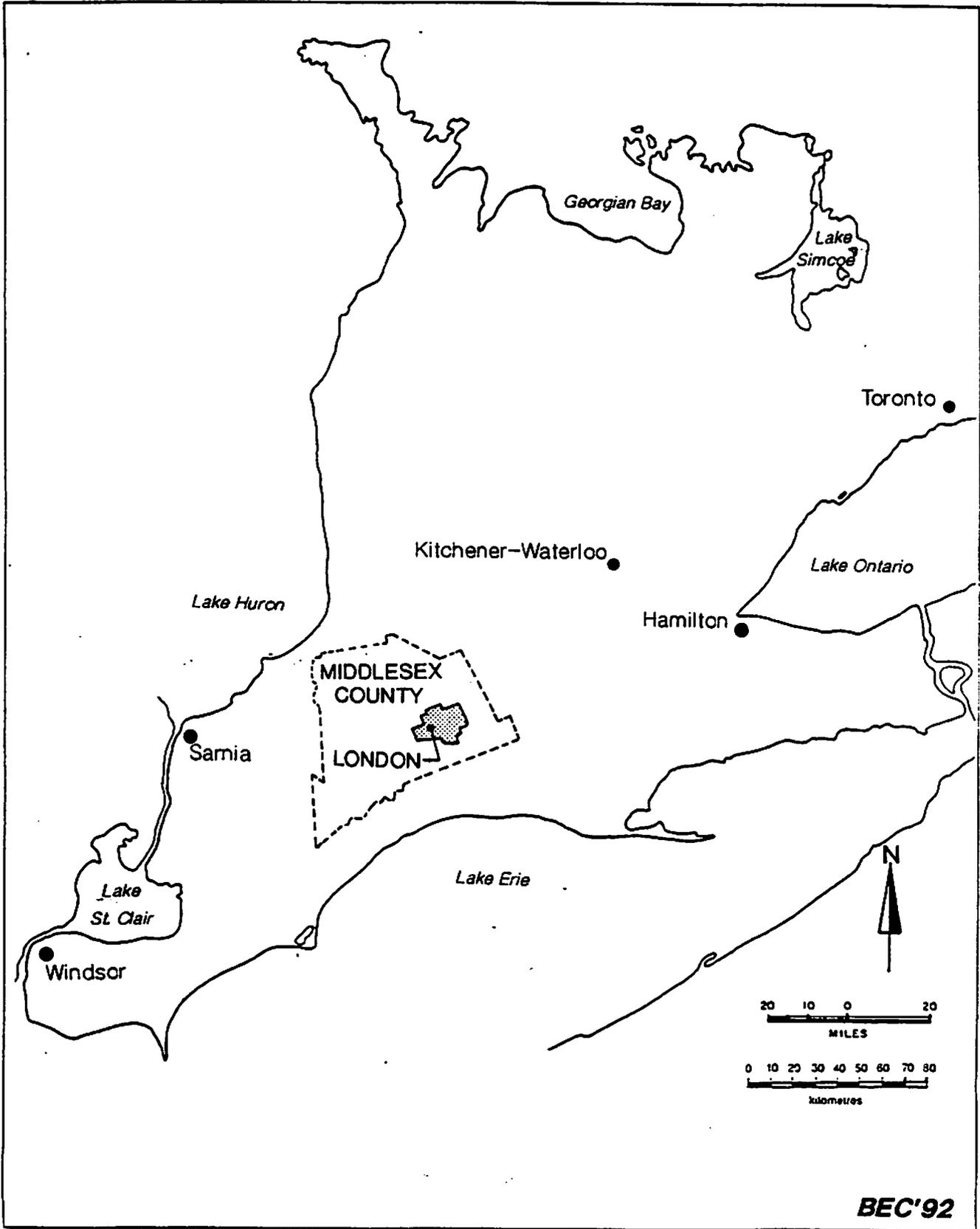


FIGURE 1
LOCATION OF STUDY AREA

an industrial concern and had become the working industrial suburb of London. The amalgamation of the two communities was an attempt to achieve solidarity and efficiency in the execution of municipal policies through consolidation of utilities, services and municipal interests (Ross, 1977, 6).

Soon afterward, in 1890, the City absorbed from Westminster Township the predominantly professional class residential neighbourhood known as London South. People had taken up residence here to avoid the heavy tax burden of the town centre. However, the argument of proper water servicing won out, and other essential services (streetlighting, fire and police services, etc.) were extended into the area. Another peripheral residential community was annexed in 1898 when London West (Petersville) was added to the City.

The next major annexation occurred in 1912 when the neighbourhoods of Ealing, Potterberg, Knollwood Park and Chelsea Green were added. This boundary adjustment was not undertaken to procure future development land, but instead to obtain Sunday streetcar service. Municipalities with less than 50,000 residents were denied Sunday streetcar service, and this was an attempt to increase the residential population to the required number. The effect of this annexation was to add a large portion of industrial land from the Township of Westminster, and a small additional parcel from London Township in 1913. As in the past, the City and the annexed area benefitted, largely through the provision of essential services.

During World War I, the depression of the 1930s, and World War II, the City's growth was much slower and accommodated for within the boundaries as they were last changed in 1912-1913. By 1950 however, London was experiencing a tremendous post-war population increase. Returning servicemen and the subsequent babyboom created a housing shortage that was felt province-wide and nation-wide. A small area of London Township near Trafalgar Street was annexed in 1950; but another annexation four years later was

rather unique. In 1954, the Township of Westminster requested the City to annex its lands known as Chelsea Heights in order for the area to receive the essential services it so desperately required (Meir, 1990, 24). Once again, the rationale for boundary adjustment was the provision of services.

Continued expansion occurred in 1958 and 1959, when additional land was annexed to the south from Westminster. London needed residential land to satisfy its growing population, and the annexed areas benefited through the extension of services (including a new school in the last case). What is important to acknowledge, and will be returned to later, is that proper planning for the City and the provision of adequate services was for the most part at the heart of the approved boundary adjustments.

2.2 The 1961 London Annexation

The annexations by London during the last half of the 1800s and the first half of the 1900s were for the most part small, and "reflected the relatively compact nature of city development until the post World War II period. In the post-war decade, however, growth had become very extensive and between 1950 and 1960 London became a greatly underbounded city" (Jackson, 1982, 17). The previous piecemeal annexations had proven to be only temporary solutions to London's need for development land. This obviously set the stage for a major undertaking which would address the boundary issue for some considerable period of time.

The answer to London's blossoming growth problem came in 1961 when the Ontario Municipal Board approved the annexation of 24,300 hectares (60,000 acres) of land from the various municipalities surrounding the City. London became the second largest municipal unit in Ontario in terms of area, increased its population by nearly 50 per cent,

and raised the assessment level by approximately 40 per cent. The boundary adjustment to massively expand the City's area was not uncontested, but at the same time was not vigorously opposed.

The immense expansion of the City was not unpredictable. London's case before the OMB was well documented. The key element of its case was that substantial suburban growth had taken place outside its borders, and that what truly reflected the community of London was an underbounded city. Further evidence was introduced at the hearing to show that the City had been supplying water and sewer services to development in London Township and that the southern part of the Township realistically formed part of the London community. Yet again, consistent with past annexations, the issue of municipal provision of adequate services was a crucial element in the final boundary decision. The OMB sought to have the most efficient or economical provision of municipal services. Also, as was beginning to emerge in the previous decisions, community of interest was a determining factor.

2.3 Proposal for London Annexation 1981 and 1988

The annexation of 1961 was the largest London had undertaken, and comfortably provided the City with land for residential and industrial expansion over a twenty year planning horizon. There were minor adjustments to the boundary in 1967, 1971, 1977, and 1988, but most were comparably small. However, over time the vacant land which was annexed slowly developed and concerns began to be raised regarding the City's future land supply. In 1979, the City, the County and the Province undertook a planning appraisal of the fringe area surrounding the City. The study recommended that the County and the City form a task force to formulate common policies on planning and development issues of

mutual concern, that the County should prepare an Official Plan, and, that the City should determine its future land needs.

During 1980, a future land needs study was initiated, and in May of 1981, Council adopted in principle and made public their proposed urban expansion scheme, based on a report prepared by the City of London Planning Division entitled Land Development Strategy for London to 2010 (April, 1981). This study was an intensive investigation of London's residential and industrial land requirements. Its purpose was to determine whether or not long term projected urban growth could be accommodated within the existing City boundaries, and if not, how much land would be required, where sufficient land would be found for urban growth, or, where to protect lands from further urban growth, and how the City should achieve the implementation of these objectives. The investigation used a thirty year time period (1980-2010), and focused predominantly on projected residential and industrial development. The report recommended that an area of approximately 6,190 hectares (15,300 acres) was required for future City Growth. A separate study by the Urban Development Institute also concluded that steps should be taken immediately to commence negotiations with the neighbouring townships and the County to facilitate the expansion of the City's boundaries.

Between 1981 and 1983, London developed an "Economic Growth Strategy" which also identified the need for additional lands to meet future anticipated growth. However, the economic downturn of the early-to-mid-1980s prevented implementation of the strategy. Also, in 1984, the London-Middlesex Common Policies Study was completed, identifying various issues of mutual concern. This study too, recommended negotiation between the parties to resolve the identified concerns.

By 1986, economic activity and urban growth were once again on the rise, giving

impetus to re-examine the previous studies on land needs. Concurrent studies by private interests confirmed the City's conclusions that London was approaching a critical stage in its residential land inventory. Again, the studies reaffirmed the urgent need to begin boundary adjustment negotiations with its surrounding municipalities.

It is rather ironic that in 1981, when the City first made its future growth needs known, the Provincial Government had just established the new Municipal Boundary Negotiations Act, 1981. However, it was not until January 18, 1988 that the Council of the City of London passed a by-law to formally initiate proceedings under the new Act. The following section examines the actual negotiation process as it was carried out during 1988 to 1991.

2.4 Examination of the Negotiation Process 1988-1991

As noted previously, the City of London made its most recent boundary expansion intentions known in 1981. At that time the City's Growth Strategy identified a need for 6,192 hectares (15,300 acres) of land. Due to a slowdown in the economy, and the development industry, the City did not pursue expansion aggressively until later in the 1980s. When boundary adjustment plans were brought back on track, the City passed four by-laws to initiate negotiation proceedings with the Townships of London, Westminster, North Dorchester and West Nissouri, to annex 9,390 hectares (23,200 acres) of land.

For the most part, 1988 was a period of fact-finding and study of the boundary adjustment proposal by the Municipal Boundaries Branch of the Ministry of Municipal Affairs and the municipalities involved. The Township of Westminster saw that it was the target for the largest portion of the annexation proposal, mainly due to its existing development on the southern periphery of London, and the location of Highways No. 401

and 402. The Township had been pursuing a plan of urban fringe development in the area immediately southwest of the City. London saw this as jeopardizing its development efforts and living off the City's various support services without contributing to their expenses. The result was an ongoing battle of petty skirmishes as the two municipalities appealed each other's zoning by-law and official plan amendments in this general vicinity, and the Province refused to approve amendments in this area of the Township.

The Township Council, seeking a defense mechanism to block the City's annexation attempts, sought permission from the Provincial Government to have the municipality erected to town status under the Municipal Act. The City reacted immediately, petitioning the Province to adjourn its consideration of the matter until after the boundary adjustment process had been complete. Both sides fought fiercely on this issue, including representations at an Ontario Municipal Board Hearing. Eventually, with the assurance from the Province that town status would not adversely affect the City's annexation proposal, London withdrew its objection and Westminster assumed town status in September of 1988. This was a defensive action taken to ward off London's expansion and was the same misguided tactic as that employed by Sarnia Township (later the Town of Clearwater) to ward off Sarnia's expansion bid. In both cases the tactic failed and eventually led to the disappearance of separate municipal status entirely.

Following further examination of its annexation proposal during late 1988 and early 1989, the City of London decided on February 20, 1989 to withdraw its proposal as it affected West Nissouri and North Dorchester Townships. The purpose of annexing these lands was to obtain the airport lands and regularize boundaries. The City was still considering these lands, but wished to defer boundary discussions until a later date.

It was not until June of 1990 that formal negotiations got underway between the City,

the County and the townships. Don Taylor, a Chief Negotiator with the Municipal Boundaries Branch, was assigned the task of bringing the parties together to achieve an agreement. Taylor gave the parties a December 31, 1990 deadline for a local decision.

During the negotiations, at which each affected municipality had appointed council members negotiating, there was little advancement made on an agreement. None of the proposals were supported by all of the committee members. In the process, however, both London and Westminster Councils clearly became aware through a letter from John Sweeney, then Municipal Affairs Minister, that he wanted a long term servicing oriented solution, not another piece-meal annexation. This led the City of London to revise its proposal to include a complete amalgamation with the Township, bringing the total annexation proposal to 32,000 hectares (79,000 acres). The Town in turn proposed regional government for Middlesex County.

By the deadline of December 31, 1990, the Liberal Government had been replaced by a newly elected N.D.P. Government, and no agreement had been reached. However, there was consensus on two important points:

- "1) Status quo local government arrangements cannot manage orderly planning, development and environmental issues: and,
- 2) More time was needed to reach consensus on a proposal to deal with those issues" (Taylor, 1991, 2).

In his February 1991 Report to the Minister, Taylor identified three proposals which had been tabled and discussed: 1) Annexation/Amalgamation (the City Solution); 2) Annexation/Joint Commission (the County Solution); and, 3) Regional Government (the Westminster Solution). The Chief Negotiator and affected municipalities generally agreed that more time was needed to reach a local solution and that the committee could benefit from the preparation of a financial impact analysis of the alternatives. Also, the City and

County officials wanted to discuss the commission alternative further, and Westminster wanted to discuss regional government with its County colleagues.

The Minister then advised the parties on February 22, 1991, that he would extend the deadline on negotiations to April 26, 1991. In so doing, he indicated that a local solution was preferable, but new arrangements were needed as soon as possible to deal with the area's environmental and development issues; if such a solution was not reached by the April deadline, a legislative solution would be required.

The parties went back into negotiation and undertook financial impact analyses of some of the options previously discussed. Westminster committed itself to the regional government option with no boundary changes, and followed an all-or-nothing approach to the negotiations. Meanwhile, there was a vast gap in philosophies between the City and the County as to who should control future growth and environmental services. Substantial disagreement emerged regarding the financial analysis of regional government; the City had difficulty in accepting the legitimacy of the figures used and suggested a parallel analysis using costs from the Region of Waterloo, but Westminster refused.

Not unexpectedly, the negotiation committee did not reach agreement by the April 26, 1991 deadline, and more importantly, formal negotiations broke down prior to the deadline. The essential element for boundary resolution under the Act was not achievable. The Committee agreed on only one thing -- the gap in philosophies would not likely close with further negotiations, and there did not appear to be any point in continuing formal negotiations. The boundary negotiation process was not successful in resolving this dispute and demonstrated the Act's inability to deal with boundary adjustments as it affects major urban centres where agreement is not possible and there are associated concerns of local government structure.

In his July 1991 Report to the Minister, the Chief Negotiator indicated that it was regrettable that the negotiating committee focused on personally preferred solutions from very early in the process, developing an "us" and "them" attitude, and losing sight of the real issues facing the area. He urged the Minister to assume responsibility for managing a process leading to draft legislation and that a consultation process be used to obtain input from a wide variety of interests. A solution was needed because major development on London's periphery could not be planned for or serviced in a comprehensive manner within the existing local government structures. The Chief Negotiator recommended that development applications in London and Westminster Townships continue to be held in abeyance because their approval could lead to irrevocable injury to the environment and add to inter-municipal divisiveness.

During the summer of 1991 the County, City and Westminster positions continued to harden. However, the City continued talks with Delaware and London Townships. Local agreement was reached between the City and these Townships with an expanded City boundary in turn for urban services. The agreements were viewed as a last chance alternative to the uncertainty of a legislative solution. The solutions were questionable compromise deals that allowed the townships to retain some of their urban development and service further development, but were not necessarily in the best long term interests of the municipalities involved because they split communities (i.e., Hyde Park) and could lead to new annexation proposals in the future. The Province rejected these deals because they lacked comprehensiveness, and did not bring about the most effective and efficient delivery of services in that they left duplication over a single community of interest.

Following an unproductive period of no negotiation and no action by the Minister during late 1991, the Chief Negotiator issued his third and final report in January of 1992.

The report contained a summary of events to date, and explained some possible solutions to the Greater London Area boundary dispute. Most importantly though, the report quite clearly announced a series of "Provincial Interests" which would arise again later in a terms of reference document and which would prove to be fundamental to the final solution.

Chief Negotiator Taylor's report dismissed regional government as an unacceptable solution due to representation issues and because it would result in two levels of government with duplication and unnecessary extra cost. Instead, he identified three possible solutions to end the boundary dispute: the City of Middlesex, the City of Greater London Area, and Major Annexation to the City of London. Again he urged the Minister to initiate a process leading to draft legislation for new local government arrangements as soon as possible. He recommended that the process allow for input from a wide range of interests and that the terms of reference for the process should articulate the Provincial Interests up-front to guarantee the emergence of an acceptable product. As we now know, the Minister's action was to initiate an arbitration process which is examined in the following chapter.

Before leaving this discussion of the negotiation process, it would be appropriate to examine it in light of its value to the London case. The advantage the negotiation process offered was that it was not set in the quasi-judicial form of a tribunal hearing and took place over an extended period of time. The benefit of this was that the parties were not forced into confrontation and defence. Rather, they could present their cases and reasonably argue the merits and demerits of each without worry of a judge or tribunal chairperson taking notes. Further, the extended time period removed the negotiating committee from the pressure-cooker scenario and afforded the opportunity for greater reflection on issues and possible solutions between meetings.

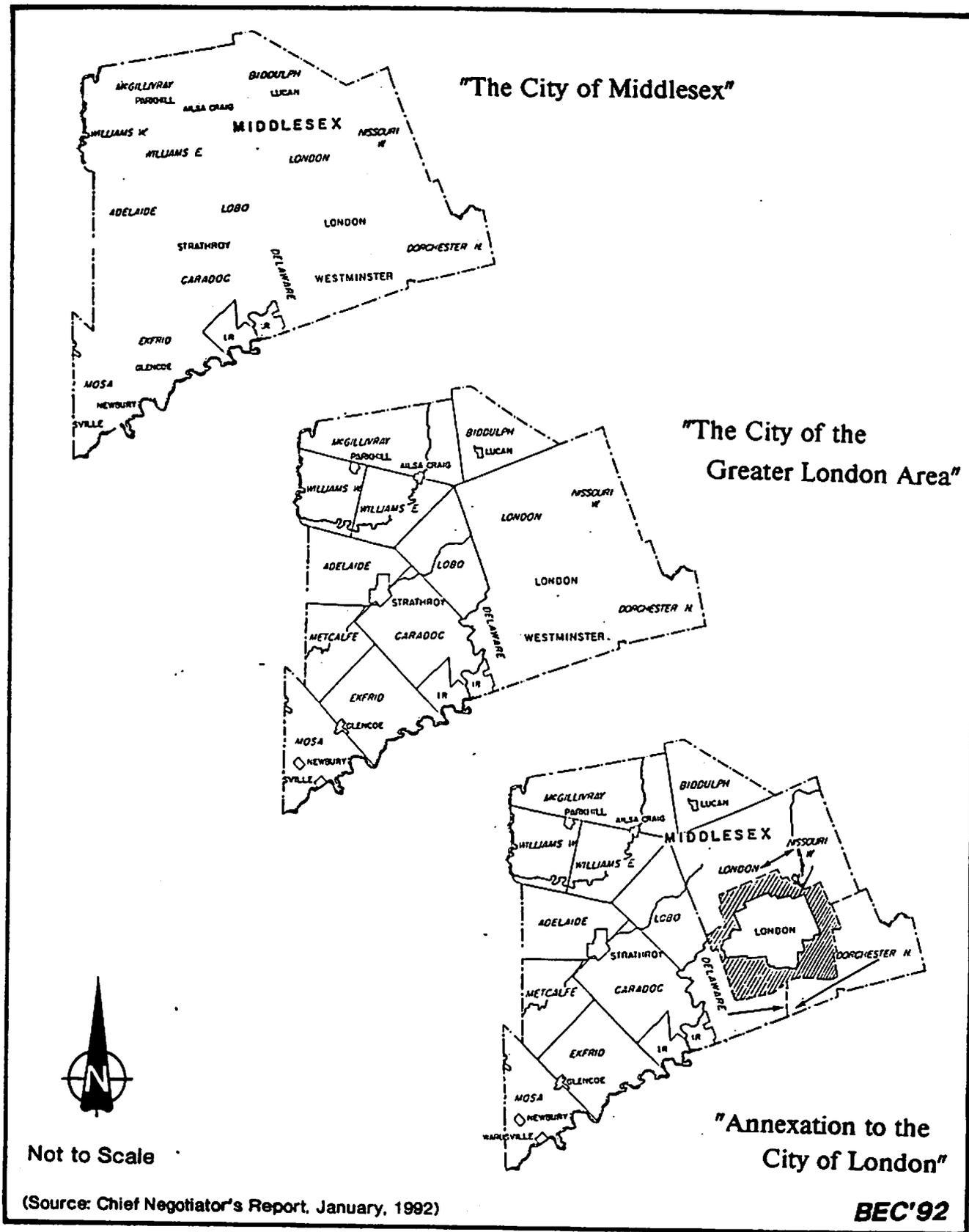


FIGURE 3
CHIEF NEGOTIATOR'S POSSIBLE SOLUTIONS

The fundamental problem with the process however, was that it required the negotiating committee to sign an agreement. Considering the strongly entrenched positions of the City, the County, and the Town of Westminster, it was almost inevitable from the outset of talks that the philosophical gap in their perspectives would never be bridged. Unfortunately, this was the demise of the entire negotiating process. While some agreement was achieved with London and Delaware Townships, and some general concepts of servicing and environmental costs were accepted by all parties, strongly entrenched positions and protectionism prevented an agreement from emerging.

Consideration should be given by the Boundaries Branch in the future, as to whether negotiations are useful in cases where municipal positions are clearly known and mostly divergent with respect to possible solutions (e.g., Windsor, Chatham, Kingston, and South Simcoe). The time spent in the London case was not very useful, and the imposition of deadlines did little to budge the parties from their firmly held positions. A more productive process should be found for these types of situations. This proposition is advanced further in the concluding chapter of this paper.

CHAPTER 3

BOUNDARY ADJUSTMENT BY ARBITRATION

Arbitration, by definition, is the settlement of a dispute by an arbitrator who sits in judgement, to settle the dispute. This is an important concept to bear in mind for this chapter. Arbitration should not be confused with mediation, negotiation or conciliation. Further, for the purposes of this case, it must be remembered that the arbitrator had his mandate quite clearly framed with a terms of reference.

3.1 Ministerial Initiation of the Arbitration Process

As discussed in the previous chapter, the Chief Negotiator recommended on two occasions (July 1991 and January 1992) that "the Minister should initiate a process leading to draft legislation for new local government arrangements as soon as possible". The Minister had provided extension and ample opportunity for the negotiating committee to arrive at a local solution and agreement. However, by that time it was apparent that the negotiation process had failed to bring about an agreement. The of the Municipal Boundary Negotiation Act, 1981 made provision for such a stalemate as found in Section 13:

- | | | |
|------------------------------------|----------------------------------|--|
| <p>"Powers of the Minister</p> | <p>13.</p> <p>(a)</p> <p>(b)</p> | <p>After the expiration of the time for informing the Minister of the opinions of the Councils of the party municipalities under section 12, the Minister may, where agreement has been reached by the party municipalities, recommend to the Lieutenant-Governor in Council the making of an order under section 14;</p> <p>refer any issue not agreed up-on to the negotiating committee or to the party</p> |
|------------------------------------|----------------------------------|--|

- (c) municipalities for further consideration;
refer an issue not agreed upon to an Issues Review Panel for the advise of the Panel;
 - (d) terminate further consideration of the application;
 - (e) refer any issue to the Municipal Board to hear any party municipality, and after a hearing, to make recommendations thereon;
 - (f) recommend to the Assembly legislation in respect of any of the issues raised by the application; or,
 - (g) take such other action as the Minister considers appropriate."
- (Municipal Boundary Negotiation Act, S.O. 1981, c. 70, s.13)

In reviewing his options, with the advice from the Boundaries Branch, the Minister had a difficult decision to make which would ultimately impact on the future of the Greater London Area. From discussions with the Boundaries Branch staff, the decision could be fairly summarized as follows:

- Option (a) was rejected because there was no agreement reached.
- Options (b) and (c) were discounted similar to (a) because there was no agreement or substantial common ground from which sub-issues could be further negotiated or reviewed.
- Option (e) was not seriously considered because it was contrary to the purpose of the Act, and would lead to the costly and confrontational scenario the Ministry was trying to avoid.
- Option (f) was also rejected because the Minister wanted a local decision, did not want to appear as a heavy-handed senior government, and wanted to avoid the unnecessary fallout from a political decision.
- Options (d) and (g) were the only choices left, both of which formed the basis of the Minister's decision.

Although the decision was not made clear until a legal challenge was later heard by the courts, the Minister chose option (d), to terminate further consideration of the application. Thus, the process under the Municipal Boundary Negotiation Act, 1981 was

ceased and the formal application terminated. His subsequent action of arbitration, whether derived from option (g) or outside the Act under his prerogative as a Minister of the Crown, was no longer restricted by the Act. In retrospect, this is one matter where the Minister should have made an unequivocal enunciation of his decision so that the parties involved and the general public were aware of precisely what the decision was, and why such a course of action was chosen.

Once the decision was made to terminate the application, the Minister still had to choose a process which would lead to draft legislation. The previously prepared municipal, consultant's and fact-finder's reports were available to aid in the decision-making process, but a decision-maker was required. The minister considered a number of possible titles for such a decision-maker, including "Information Officer", "Commissioner", and "Consultation Officer" (Taylor, July 30 1992), but eventually settled on "Arbitrator" because it was a title generally acceptable in society as a dispute settlement officer. The choice, once again in retrospect, proved to be controversial because there are specific Provincial Arbitrators, under the Ontario Arbitration Act, and this position was not one of those. Further, as will be discussed, the boundary arbitration process was shrouded in conditions and terms of reference, not normally part of an arbitration process.

After selecting a "non-political" process to lead to draft legislation, and choosing to call it "arbitration", the Minister, not surprisingly, followed the path recommended by the Chief Negotiator in his January 1992 Report. Terms of reference were prepared to articulate the Provincial Interests, a time limit imposed to facilitate legislative consideration in the Spring of 1992, and a broadly based public consultation process was established. This step was one which diverged from what would be logically expected once the arbitration process was chosen. Arbitration is both a legally and culturally accepted decision-making

process in our contemporary society. An arbitrator can be given general ground rules to guide his process, but he must have discretion, and not become encumbered with terms of reference which unduly restrict his ultimate decision. The Provincially imposed terms of reference set out a number of conditions and posed them in such a way that the negotiator had very little discretion, or room to manoeuvre. Thus, the process was truly not arbitration, but one of facilitator for the Provincial desires.

The terms of reference looked remarkably similar to the Chief Negotiator's January 1992 Report. (See the appendix for the Terms of Reference.) The mandate was: 1) To review existing studies and information; 2) Consult a broad range of interested parties, agencies and elected officials, in consideration of the Provincial Interests; and, 3) Make recommendations to the Minister within 60 days on new structural arrangements that reflect the Provincial Interests. The Provincial Interests were expressed in the three major areas of growth, environment, and costs. The particulars of those interests were quite specific, and in the author's opinion, supported by the opinions of other observers, instrumental in shaping the arbitrator's final decision.

The final step in initiating the arbitration was the appointment of an individual to fill the position. The actual selection process has never been disclosed, but one thing was certain, the Minister was firm in wanting a local London area candidate. It is known that the Minister entertained suggestions from the subject parties to the dispute, and local MPPs. Whatever the considerations that were made, Mr. John Brant, a London businessman was chosen. There has been wide speculation that he was chosen for his knowledge of the local business and social climate, his connections with the area business and university community, and because he was willing to take on the task and its very tight time limits.

Mr. Brant publicly acknowledged that he accepted the appointment on the condition

that his recommendations be fully implemented by the Minister. Thus, in making his announcement on the selected process on January 30, 1992, the Minister appeared to be delegating his responsibility, and attempted to use the Provincial Interests stated in the Terms of Reference as a means to indirectly control the final outcome. The process followed by the Arbitrator is discussed in the following section.

3.2 The Arbitration Process

Mr. Brant, the appointed arbitrator, set to work quickly to begin the arbitration process. The first two weeks after his appointment were spent setting up his organization and reviewing a large amount of information which had been assembled. The next four weeks were organized into a series of 12 public hearings. The last two weeks were reserved for review of submissions and formulation of recommendations.

The series of public hearings which were scheduled, were intended to fulfil the mandate for broad consultation. The media were extremely interested in the annexation/arbitration process and helped Brant to widely publicize the public participation process. Brant arranged for 10 meetings (later expanded to 12) dealing with the following matters:

Focus

- The Local Community
- Environmental Issues
- Essential Services and Institutions
- Political and Jurisdictional Questions
- Town Hall Meeting (Summary and Synthesis of all Hearings)

Communities

- Northwest of London
- Northeast of London
- City of London
- Middlesex County - Beyond London Area
- South of London

There was little or no restriction on who could make a presentation at the public meetings. Anyone who expressed an interest in making a presentation on an issue germane to the meeting's focus was generally allowed to speak with a 10 to 15 minute time allowance. Thus, there was no qualification or criteria for speakers or parties, and no assurance of the accuracy of their information. The result was the presentation of misinformation in many cases.

The popularity of these public hearings was attested to by the attendance and length of the meetings. It was common to have several hundred people in attendance and for the meetings to last four or five hours. Unfortunately, the meetings did not appear to be attended by a representative cross-section of the population. Instead, there was a disproportionately large number of anti-annexationists. This was not unexpected, though, since this is often the case with local government issues. Supporters of an issue will often expect others to carry the cause, while the opposition tends more often to be able to promote attendance at meetings in order to demonstrate their opposing view. This appears to have been the case here, since the overwhelming number of presentations were in opposition to annexation and many of those in attendance seemed to express a similar sentiment through their reaction to the presentations.

Throughout the public hearing process, John Brant continued to explain to the presenters and audience that he was truly interested in their concerns and that he would use their input to shape his decision. Not as often, but still at each meeting, Brant reminded those in attendance of his terms of reference as set down by the Minister. This issue is pursued further in the analysis section of this chapter, but it raises the question of whether Brant really thought he could effectively use their input, or if he was simply placating them during the process which was somewhat predetermined by the rather confining terms of

reference. Regardless, many people felt their input was meaningless in the final result.

In addition to those who freely came forward to request an opportunity to speak at the hearings, others (often pro-annexationists) were often invited or coaxed by the arbitrator's office staff to attend. This often included development interests and/or their consultant representatives. It was somewhat akin to entering the lion's den for them to attend and present to a hostile audience, nonetheless, some did. This appeared to be an attempt by the arbitrator to bring about more balance to the viewpoints expressed at the hearings, and draw out more accurate information than that which was being presented by some of the other presenters in a rather cavalier manner.

The better prepared presentations were mostly those of the municipalities involved because of their background on the issues and their stake in the outcome. All municipal councils quite reasonably represented their positions on the issues. However, what was notably absent was well researched presentations by local institutions or local government agencies and special purpose bodies. The school boards, utilities commissions, social agencies, and transit commission, played a surprisingly low profile role in the hearings process, although they are a very important element in the structure and organization of local government. This lack of representative input would clearly affect the resulting decision.

In addition to the formal and widely publicized hearings, the arbitrator conducted a number of private meetings. These meetings included the attendance of many experts such as engineering and business consultants, municipal and provincial government employees, local and provincial elected officials, and selected members of the faculty of the University of Western Ontario. This was said to have been done to satisfy the terms of reference requirement for consultation with a broad range of interests.

Subsequent to the public hearing process, Brant had two weeks to review submissions for his report to the Minister. There were 300 submissions from the public forums and approximately 700 submissions in the form of letters and documents received from a total of 286 persons, agencies, municipalities and Ministries which were consulted.

The report was completed by the arbitrator and delivered to the Minister on the deadline date of March 30, 1992. The Minister reviewed the report and announced its contents and his full support of it four days later on April 3, 1992. The intent of this report is not to analyze the decision, but instead the process. Nonetheless, it is worthwhile to state the highlights of the decision in order to better understand the framework of the process analysis. The decision was in effect a large annexation for London which included:

- 1) The annexation of 26,000 hectares (64,200 acres) of land from the surrounding townships.
- 2) The Town of Westminster would cease to exist, being largely annexed to the City, and the remnants to the adjoining municipalities.
- 3) A three kilometre buffer zone to surround the City to discourage fringe development.
- 4) Newly acquired farmland in the City to be preserved for at least 10 years.
- 5) The London PUC to be abolished, with parks and recreation, and water services responsibilities going to the City of London, and a new hydro-electric commission being established.
- 6) The City owned landfill site in Westminster to become a regional facility.
- 7) The County will receive \$20 million in compensation from the City.
- 8) The County to undertake a restructuring and planning review.
- 9) The City and County Boards of Education to determine a long term solution by September 1, 1993.

This section has explained the arbitration process as it was carried out by John Brant, and the essence of his decision. Neither the manner in which the process was carried out, nor the decision itself was satisfactory to all of the parties or observers. The following section takes a more critical view of the process and some of the problems which were encountered in the first attempt at this resolution mechanism.

3.3 Analysis of the Arbitration Process

It is always easier after the fact to criticize a process or procedure and identify its weaknesses. This section is not intended simply to list the points of failure with the arbitration process; rather, it is to offer a critical assessment of the process for constructive purposes to improve its subsequent use or identify more productive means of accomplishing the desired task. The Provincial Government and Minister of Municipal Affairs had an unenviable task to undertake; they made their decision and had the arbitration process carried out. Now is the time to reflect on that process so as to be better prepared for handling a similar problem in the future.

From the start of the process there was a concern with respect to its title. The choice of "arbitration" was somewhat unfortunate because the process as it was carried out did not reflect what has become legally and culturally accepted as arbitration. Normally, an arbitrator has established ground rules within which the process must operate, but a reasonable amount of discretion is left up to the arbitrator. In this case, the terms of reference were rather restricting in that they spelled out a number of specifics of the Provincial Interests which were to be reflected in the decision. Setting out the Provincial Interests was not a problem in itself, but requiring them to be reflected in the decision and then titling it arbitration was a problem because it provided the arbitrator with only minimal discretion.

The other possible options for labelling the process could have been better choices because they would not have conveyed the mistaken impression of traditional arbitration. An "annexation commissioner", or "consultation chairman" would have been better choices. This problem may have arisen from the Boundaries Branch and Government having a mistaken impression of their role as facilitator. They are not a facilitator, but are instead

another party because they are pursuing the concerns, desires, and objectives of the Province. The Government's desires (Provincial Interests) are another set of objectives to be weighed in the deliberations. Therefore, a third-party unencumbered negotiator or arbitrator would have delivered a less biased and less restricted decision. However, it may have also been a less desirable decision for the Provincial Government to accept.

An associated problem is with respect to the terms of reference and where they originated as Provincial Interests. These 10 principles were stated in the terms of reference under the three broad categories of growth, environment and costs. Where did these principles come from, and were they known to the parties in the previous negotiation process? There is no evidence to suggest that these principles were ever previously enunciated, or existed in any collective form to assist in the negotiations aimed at resolving the London-Middlesex annexation dispute. Further, there is no evidence to suggest they were sanctioned by the Cabinet, Legislature, or any Provincial Ministry. This is not to say the principles are not laudable goals, but only that their foundation was not substantiated or recognized prior to their emergence in the terms of reference. It would appear the principles were evolved within the Boundaries Branch, and, rightly or wrongly, assumed to be acceptable as Provincial Interests.

A third and most fundamental problem with the process was that the Minister had chosen to terminate the process of negotiation under the Municipal Boundary Negotiation Act, 1981, and begin a new process. The parties to the process, municipal staff, academic observers, and the general public were under the impression the Minister was acting on the basis of Section 13(g) of the Act. It was not until an imminent court challenge arose that any public announcement was made regarding termination. Provincial staff insist that the decision was made prior to January 30, 1992, but, there was simply not proper follow-up to

prepare the necessary documentation. If this was the case, the Province failed miserably in communicating this decision to the public. Perhaps haste had a role to play in creating this problem.

Another issue with the process, related directly back to the terms of reference, is the time allotted for the process. There have been many arguments for and against the 60 day time period. The Minister indicated that a large amount of municipal and consultant documentation had been prepared or collected during the fact-finding and negotiation process, and that 60 days would be sufficient to review that information and carry out the required public consultation process. It was clear that he wanted an expedient resolution to this long standing dispute. While it is true that much information was already available, Brant had only two weeks to view the existing information because the middle four weeks were consumed largely by the public hearing process and managing the new inflow of information. This left only two weeks to reflect on the information provided and to explore the possible decisions and recommendations he could make. It may have been more appropriate for the Ministry to consider a two phase process, whereby phase one would have included a recommendation on the nature and extent of the annexation solution, and phase two would then consider the implementation issues with additional and specific input. This would have assisted in reducing hasty implementation decisions, and would have permitted more thoughtful input on structural or implementation concerns such as schools, Public Utilities Commission, county restructuring, policing/fire services, etc.

From a public administration perspective, the public consultation process was of major concern to academic, governmental, business and citizen observers and participants. The terms of reference appeared to indicate a genuine desire for consultation with a broad range of interested parties. Carrying this out was to be "in such a manner as the arbitrator

deems reasonable" (MMA, Terms of Reference, 1992, 3). The questions which arise from an assessment of the process are: Was the consultation process left too wide open? Was the attendance at the hearings representative of the majority or minority? And, was the public deceived on the possible impact of their input?

First, the question of the range of interested parties goes to the very heart of the process. The Ministry had moved away from OMB hearings to avoid the quasi-judicial approach which depended on expert witnesses and cross-examination; the alternative negotiation process was to provide a greater degree of accountability by municipal councils who were part of the process. However, broad consultation as carried out in the arbitration process elicited large amounts of uncorroborated evidence, misinformation and sometimes useless information. It is important in local government to ensure public participation. However, it really did not help the process by allowing evidence to be submitted without qualifying its accuracy or authenticity. In fact, it only added to the confusion and encouraged those individuals who held misguided beliefs. Some form of qualification for the accuracy of information sources related to the submissions should have been explored to reduce the proliferation of wrong information and also to improve the accuracy of the submissions.

With respect to the representativeness of the public hearings, it would be fair to suggest, as pointed out previously, that the hearings reflected the some general apathy which is reflected in local government more broadly. Unless the issue will have some immediate or direct impact on an individual's property or neighbourhood, they will leave the issue for others to pursue. Even supporters of the annexation took the apathetic view that others would represent their position at the hearings. As expected, based on local government experience in the past, the opposition to annexation was overwhelmingly represented. Thus,

the hearings seemed to be over-represented by the opposition, and this leads one to question the usefulness of input if it is not reasonably balanced, especially if it is expected to have an impact on the decision.

The last aspect of the public participation issue is even more fundamental to the process. Was the public deceived regarding the value of their input? The terms of reference mandate item number two required the arbitrator to, "challenge consulted parties to consider and make suggestions reflecting provincial interests" (MMA, Terms of Reference, 1992, 3). This was stated clearly in the terms of reference, and noted at least once by the arbitrator at each of the public hearings. However, was the public completely aware of this requirement, or did many of them not even read the terms of reference? It was apparent from the submissions that the public understood this to be a fresh process without limitations on the possible solutions. It has been suggested by some participants and observers that Brant deceived the public and presenters as to the importance of their submissions. Brant was extremely courteous and cordial to all presenters, but perhaps his kindness and persuasive manner misled many members of the public. The terms of reference quite strongly shaped the final decision, and therefore should have been more strongly emphasized so that the public knew the importance of the Provincial Interests and the extent to which they would shape the ultimate decision.

A matter of overwhelming importance to any resolution of the Greater London Area dispute, is that of local government structures. The terms of reference were flawed to the extent that this was not stated as a Provincial Interest. Growth, environment and cost were the three areas specifically identified, and regional government was rejected outright. The future success of local government in the London-Middlesex area was at stake, but was not given priority consideration. This area is still operating on government which was largely

established by the Baldwin Act of 1849. In more recent times regional government and county restructuring have attempted to address the local government structural problems in other areas, and should have been of prime importance in this case.

This apparent omission in the arbitration process applies not only to municipal boundaries and government (i.e., restructuring for public efficiency and effectiveness), but also to local government in respect of special purpose bodies. Two most obvious examples are the London Public Utilities Commission and the boards of education. These bodies were notably absent from the previous negotiation process and had a very low profile in the arbitration process. Their minor roles were played out at the same public meeting on political and jurisdictional issues (March 10, 1992), and it is understood that the London PUC and Board of Education appeared only after they were specifically invited by the arbitrator. Thus, not only did the Province err in not placing this as a priority Provincial Interest, but the special purpose bodies also failed to see their place in the process and the long term implications of annexation on their agency.

3.4 Comparison of Arbitration Process with Plunkett and Lightbody Study

As noted in the first chapter, one of the objectives of this study was to relate and compare the process in the London case to the study of a similar large annexation by the City of Edmonton in 1981. The study is one of very few academic reports on annexation, and one which applied a set of criteria to assess the process on its procedural effectiveness. Plunkett and Lightbody (1982), in their article entitled Tribunals, Politics, and the Public Interest: The Edmonton Annexation Case, considered the attempt to reorganize local government in the Edmonton metropolitan region from the perspective of the process employed.

In that case, the Edmonton metropolitan region had experienced sustained growth and development both inside and beyond the formal city boundaries. The wider community of interest, and the need for comprehensive planning and delivery of services led the City of Edmonton to apply for permission to annex two adjacent municipalities and significant portions of two others (an area of 189,073 hectares / 467,193 acres). The City had originally requested the Alberta Legislature to consider the matter through an investigatory commission or task force. The Provincial Government refused, and directed the City to apply to the Local Authorities Board, a quasi-judicial administrative tribunal.

The Local Authorities Board held 106 days of hearing, heard 183 witnesses, received 299 exhibits, and produced 12,235 pages of transcript. The process consumed an estimated \$6 million for the parties involved, and created the inevitable adversarial positions. The decision of the Board, with a few insignificant exceptions, was generally in favour of the City's application. Plunkett and Lightbody concluded that the tribunal was not helpful in laying the groundwork for the ultimate political disposition of the case. Their conclusions flowed from an assessment based on the following:

"Whatever the procedure employed, however, we believe political authorities are seeking complete, and accurate, information and logical argument therefrom. Whether they choose to implement such logic, based upon the evidence, is naturally another question. Moreover, in a matter such as metropolitan reorganization major questions of value must be resolved: city size, public access, service decentralization, form of government and the like. It might reasonably be expected, therefore, that the procedure employed would:

- a) define these issues clearly;
- b) aid in the development of public understanding by maintaining a focus on issues;
- c) give citizens an opportunity to be heard but not in an intimidating atmosphere;
- d) restrict the time-consuming and often irrelevant argument of the courtroom;
- e) yield a solid analytical base for subsequent policy decision-making; but,
- f) not be overly costly for all parties concerned.

In writing this essay, our purpose is not to probe into the merits of the respective positions advanced but rather, in light of the above criteria, to evaluate a procedure which is required to make important, and politically sensitive decisions. Our experience with the Edmonton annexation case strongly suggests that the tribunal process fails badly on all counts" (Plunkett and Lightbody, 1982, 208).

Relating these same criteria to the Greater London Area annexation provides an excellent opportunity to make a similar evaluation on the basis of established academic criteria. The criteria are used to draw some conclusions with respect to the use of the arbitration process as a means of providing the foundation for a political decision.

An extremely important consideration in local government reorganization and major boundary adjustment is the clear definition of the issues, and the development of public understanding of the issues involved (criteria 'a' and 'b'). The preceding fact-finding process, Chief Negotiator's Reports, municipal reports and consultant's reports generally provided a common understanding of the issues and what had to be considered in the process. Also, the terms of reference identified what was considered to be the Provincial Interests. Thus, the issues were clearly defined. However, the process was substantially less successful in aiding in the development of public understanding by maintaining a focus on the issues. Large numbers of the public were not fully aware of the arbitrator's terms of reference, and were not familiar with the background documentation previously prepared. This observation was drawn from attendance at the public hearings and from review of the submissions. As in the Edmonton case, the arbitrator did not lose sight of the issues involved, but the process did little to enhance the public understanding of them.

With respect to citizens being provided an opportunity to be heard in a non-intimidating atmosphere (criterion 'c'), the process appeared to err on the other extreme. Any and all citizens or groups from London and surrounding area were provided with the fullest of opportunity to be heard in a non-intimidating atmosphere. In fact, the process was so open and unqualified it led to presentations of misinformation and may have misguided some individuals and led to confusion for others.

Following from the above-noted opportunity of everyone being welcome to make

submissions, the process did not restrict the time-consuming and often irrelevant argument of the courtroom (criterion 'd'). A quasi-judicial administrative tribunal may have restricted some of the irrelevant argument, but the arbitration process permitted numerous time-consuming and often irrelevant arguments which consumed precious time which was extremely limited in the London experience.

The arbitration process, as well as the previous negotiation process, failed to yield a complete and solid base for subsequent policy decision-making (criterion 'e'). This is not to suggest that a solid base was not beginning to form; only that a solid base was not complete by the time decisions were made. Examples of this are with respect to the special purpose bodies. Insufficient information had been assembled regarding the PUC and boards of education. Nonetheless, the arbitrator made a decision on the PUC and deferred action on the boards of education to a subsequent process. Such a decision appears to be an inconsistent action on the part of the arbitrator, and one which flowed from the insufficiency of information.

The last aspect, cost (criterion 'f'), was not an issue which generated any significant amount of concern from the public or politicians. There is little doubt that the arbitration process was considerably less expensive than an OMB hearing would have been, and it had the benefit of using reports previously prepared for the negotiation process.. Although the process was not overly costly for the parties involved (relative to past experiences), some observers have suggested it was a waste of money considering the result. They suggest that the same end result could have been achieved by the Province in the autumn of 1991 without the expense and time involved, because the Province controlled the arbitration outcome to a large extent anyway.

In the assessment of the author, based on the criteria of the Plunkett and Lightbody

study, the arbitration process which was used as a settlement mechanism in the London case was not appropriate. The process was successful on only two criteria ('a' and 'c'), unsuccessful on three criteria ('b', 'd', and 'e'), and of questionable merit on one other criterion ('f'). The process did clearly identify the issues and allowed substantial opportunity for public input. However, where it failed was in not enhancing the public understanding of the issues, not restricting time-consuming irrelevant argument, and not building a solid base of information for subsequent policy decision-making. The process was more successful than the Edmonton case (it failed on all six criteria), but must still be considered inadequate and inappropriate for its application in resolving the boundary dispute in the Greater London Area.

CHAPTER 4

SUMMARY AND CONCLUSIONS

In chapter 1, the objectives of this study were outlined as an attempt to review and analyze the processes used to resolve London's annexation dispute and to determine their effectiveness and appropriateness. In order to meet these objectives, this study provides both a descriptive and analytic component. The descriptive component provides the necessary background to understand the circumstances involved, while the analytic component investigates the processes employed so as to obtain an objective appraisal of their usefulness.

This chapter briefly discusses the reaction to the arbitrator's report and some of the subsequent implementation problems, and summarizes the findings of the above-noted investigation. In addition, this chapter and the study conclude with some suggestions on the future use of arbitration as a process to resolve municipal boundary disputes.

4.1 Reaction to the Arbitrator's Report and Implementation Problems

This study is intended to analyze the annexation dispute settlement process and not to judge the merits of the decision. The annexation observers have made their own assessments of the decision, and for the sake of completeness in concluding this paper, this section briefly discusses some of the reaction to the decision and some of the

implementation problems encountered. Those most happy with the decision were the City of London Councillors and administration who supported the annexation, and the Ministry of Municipal Affairs Boundaries Branch staff. The Boundaries Branch staff were somewhat satisfied because the result was larger than their minimally suggested solution, and because they finally had a solution. London Council and staff who supported the proposal were satisfied because they had generally achieved their goal.

The opponents to annexation were quick and harsh in their judgements. The London Free Press referred to them as "Brant Bashers" in their criticism. Many suggested that the "fix was in" before Brant was appointed and that he was simply there to carry out the Provincial wishes. Some of those who understood the terms of reference thought Brant should have challenged them to get modifications. The County and surrounding municipal politicians all reacted with outrage at the decision. It is not clear whether they did not understand the extent to which the terms of reference would strongly shape the outcome, or if they were simply acting their part for the appearance of things to their constituents.

Some of the people who made submissions felt their input was not really considered, while other input outside of or after the public hearing stage (such as information from the City of London) was given too much weight. Brant was approached by people afterwards saying "you didn't hear us, you didn't listen" (London Free Press, April 27, 1992, A1). For his part, Brant felt that these people did not read the terms of reference and were expecting him "to break his mandate" (London Free Press, April 27, 1992, A1).

The Minister of Municipal Affairs, Dave Cooke, fully supported the Brant Report on April 3, 1992, the day it was released, saying he would act quickly to introduce legislation to ensure the annexation became reality by January 1, 1993. Cooke said, "A solution should have been found a long time ago", and, "You dropped this in my lap. The lobbying and

manoeuvring are over" (London Free Press, April 3, 1992, A1). It was an unusually strong show of support by a Minister of the Crown, and one which later proved to be very limiting on any repositioning the Minister may have wished to make at a later date.

The County was shocked by the decision and mounted a Court challenge. In their statement of cause, the County's solicitor challenged the Minister's action of appointing an arbitrator to settle the dispute, instead of following Section 13(c) of the Act and referring the matter to an Issues Review Panel. Legal counsel for the Province argued that the Minister was not acting under the authority of the Act because he had terminated the application, and, therefore, was using his prerogative powers as Minister of Municipal Affairs. It is generally accepted that the Minister has the legal authority to do what he did, and it may well be a moot point to argue over his actions, but the important thing to note here is that it was not until the legal challenge was raised that most observers became aware that the Minister's actions were taking place outside of the Act, and that the original application had been terminated. At the time of writing this report, the courts had not rendered a decision on the County's challenge.

Other forms of challenge occurred after the Minister began the implementation of his decision. Local MPPs representing the County areas attempted to influence the shape and extent of the annexation. One MPP tried to have much of Westminster kept out of the City, and another attempted to get the Minister to consider restructuring Middlesex and Elgin Counties. The London PUC also considered a legal challenge (and engaged legal counsel), but later rejected the idea because they would have had to use public funds to pay the legal costs.

Once legislation to implement the annexation was tabled (June 24, 1992), it got caught up with many other bills which were being stalled due to political bickering and

filibustering by the opposition. The London annexation bill received only one of three required readings by July 23, 1992 when the legislature broke for the summer. This left the bill stranded and many of the parties involved in a rather tenuous position of not knowing whether legislation would proceed, and if so, when. (At the time of writing, the future of the bill was still unknown.)

It became evident to many people that the annexation issue was not over, but in many ways just beginning with the legislation process. Also, it became apparent to the Minister that his problems were not over, but continued to plague him through the process. The problems of poorly managing the arbitration process were beginning to be repeated in the legislative process. The foregoing section provides a brief discussion of the reaction to the annexation decision and the subsequent implementation problems. This issue is the subject matter for an entire paper itself, and is presented here only for the purposes of completeness in concluding this paper.

4.2 Summary of Analytical Findings

When the research for this paper began, it was intended as an attempt to assess the appropriateness of the annexation dispute settlement process which the Provincial Government had chosen. There was much concern about the process from a wide variety of observers. Therefore, the author's purpose was to determine if the concern was legitimate, or if it was simply rooted in some of the observers' opposition to the annexation proposal in general. The results of this analysis confirm that the concern was warranted, and that the arbitration process was not an appropriate choice in this instance.

A finding of this study, even before the arbitration process was considered, is that the current negotiation process in the Municipal Boundary Negotiation Act, 1981 does not

provide a realistic opportunity to resolve annexations other than small ones which can be readily agreed upon by the parties involved. The act is premised on the assumption that reasonable people can negotiate a settlement. This is not necessarily true. The key element, an agreement, was never forthcoming, and the entire process bogged down. The County and some of its constituent municipalities remained somewhat flexible, but Westminster maintained a firm position against annexation. This prevented any hope of an agreement or settlement ever being reached. An alternate process should be available in cases where it is readily apparent that settlement is unlikely due to hardened positions.

As indicated previously, the Minister of Municipal Affairs made an unwise choice in selecting the form of arbitration he did as a dispute settlement process. It was not true arbitration as society has come to understand it, and was too encumbered with the conditions of the terms of reference. If such conditions were necessary to impose on the process, it should have been a different decision-making process, and should have been more appropriately titled. Further, the process was poorly managed by the Boundaries Branch of the Ministry and the arbitrator's office. It was not widely known until after the completion of the process that the Minister had terminated the application under the Act. More importantly, the arbitrator and the Province failed to make the public fully aware of the terms of reference, and the significance of the Provincial Interests. The arbitrator acknowledged himself afterward that a better information package should have been provided by the Ministry to ensure everyone was working from the same set of facts.

The Province itself seemed to be confused as to its role in the whole affair. It continued to see itself as a facilitator, but it became quite apparent that the Province was in fact a participating party which eventually carried the most weight in determining the ultimate outcome of the process. The Province continued to perceive itself as an outside

party assisting the process, whereas it became a bigger player than either of the City or the County and its municipalities. The Provincial objectives took precedence in the entire decision-making process. Additionally, the Provincial Interests were never debated so as to publicly justify their legitimacy. As stated in the paper, the Province did not adequately consider what the Provincial Interests were, because if it did, it should most importantly have included local government structures as a prime consideration. Proper consultation with the local government special purpose bodies and agencies (e.g., PUC and boards of education) would have served a greater purpose in determining the best structural form of future local governance of this area.

Another basic issue is the manner in which public input was received. The arbitrator was not required to act in a judicial or quasi-judicial capacity. There were no rules regarding how he obtained information or evidence. Thus, some of the submissions and presentations created a situation which permitted misinformation to be entered, led to confusion or misguidance, and sometimes added irrelevant information to the process. Additionally, not all of the submissions were made public. The effect of this was to cast a shadow of doubt on the entire process.

Another significant finding was the result of the analysis of the process based on the criteria employed in the Plunkett and Lightbody study of Edmonton's annexation. The Edmonton study provided an established set of criteria against which the arbitration process could be objectively measured and related. The analysis confirmed the earlier findings that the arbitration process was inadequate in that it failed to enhance the public understanding of the issues, did not restrict the irrelevant argument, and did not build a solid base of information. The Plunkett and Lightbody study permitted a reasonable comparison against a theoretically based standard. This summary has not included any suggestions for

improving the annexation dispute settlement process. Instead, it has drawn together some of the most relevant drawbacks to the process used and identified the areas of concern. The final section brings the study to a close and discusses some thoughts for improving the boundary dispute settlement process in a more productive and meaningful way.

4.3 Study Conclusions

This study has ultimately led to the conclusion that neither the existing negotiation process under the Act, nor the alternatively chosen arbitration process were particularly successful or appropriate in resolving the boundary dispute in the Greater London Area. In fact, the arbitration process did very little to add substantial information to the decision-making process. Instead, the process came to be viewed with a great deal of suspicion by those who saw the Provincial Government as a manipulator which guided the outcome of a "done deal". For purposes of integrity, the Minister would have gained more respect and would have been better received if he had made the same decision himself in the autumn of 1991. However, his political advisors must have counselled him to avoid the potential and uncertain ramifications of such an action, and, therefore, he chose a local individual to carry out the provincial desires under the guise of conditional arbitration.

The Greater London Area experience serves to underline the need for a better settlement process. There are other similar situations across the Province waiting for boundary dispute resolution (i.e., Windsor, Chatham, Kingston, and South Simcoe). These other municipalities are similar in that the problem has been emerging for a number of years, they have urban development occurring beyond the urban boundary, and the municipalities which are the target of annexation are unlikely to concede any or all of their land due to the financial implications of losing the urban tax base. Therefore, a mechanism

should be established for the Boundaries Branch staff to identify these situations prior to spending the time and money of going through the negotiation process. As evidenced in the London experience, the negotiation process served only to strengthen the stand of some of the key players.

Once these situations are identified, the Ministry could move onto the fact-finding and preliminary data collection process. This would allow for the clear definition of significant issues, including Provincial Interests. An education phase could then be carried out to aid in the development of public understanding by maintaining a focus on the relevant issues. Following from this, would be a meaningful public participation process carried out by an appointed task force or commission. Such a task force or commission would have appointees from both the local and non-local area, and have a reasonable background to understand the issues (e.g., academics, lawyers, engineers, politicians, planners, and administrators). The process would also provide for the establishment of legitimate criteria or qualifications for making submissions or presenting evidence, but in a non-intimidating forum. In turn this would yield a solid analytical base of information for subsequent policy decision-making.

The general intent and purpose of this study was to analyze the arbitration process as a decision-making mechanism for resolving the boundary adjustment dispute in the Greater London Area. That analysis has been completed and the findings indicate that the process was, for the most part, inappropriate and poorly handled by the Province. An improved process is required, and this conclusion has proposed some suggested improvements. It is hoped that this study will serve some useful purpose as an assessment for review by the Municipal Affairs Boundary Branch staff, and will provide a stimulus for other studies concerned with the resolution of boundary disputes. This is an area of study

which is in need of more contemporary research. The lack of attention given to the study of boundary dispute resolution should be redressed, and accorded a higher priority in the consideration of government structures.

APPENDIX I

**TERMS OF REFERENCE
GREATER LONDON AREA
ARBITRATION PROCESS**

TERMS OF REFERENCE GREATER LONDON AREA ARBITRATION PROCESS

BACKGROUND

In 1981, the City of London announced its intent to annex parts of adjacent municipalities. In November, 1988, the City formally applied under the Municipal Boundaries Negotiations Act to annex parts of the Townships of Westminster, London, West Nissouri, and North Dorchester. A steering committee was established to assemble information, and a fact-finder's report was released in December, 1989. The report recommended a negotiating committee be established to take a comprehensive approach to local government structure. Significant environmental and development pressures around London were identified, including increasing demands for extension of municipal services outside London, particularly into Westminster.

The negotiating committee was formed in April, 1990, and included representatives of the City of London, the Town of Westminster, London Township, North Dorchester, West Nissouri, Delaware, and the County of Middlesex. The original deadline for the committee was December 31, 1990, which was extended to April 26, 1991. Development applications in Westminster and London Township have been held in abeyance (i.e. frozen) until the boundary issues are resolved.

The negotiating Committee failed to reach agreement. The Chief Negotiator, Don Taylor, submitted a report to the Minister in August, 1991. It was released in September. This report recommended that Municipal Affairs staff develop a consultation process leading to draft legislation.

Outside of the area boundary negotiation process, the City of London and London Township attempted to reach an agreement on the annexation of approximately 2,430 hectares. The agreement would allow the City to annex parts of the Township of London in return for the provision of water, sewage treatment, and waste disposal to parts of the Township. This agreement is contingent on the province providing extensive funding. The local reaction to the agreement, for example, by residents of Hyde Park whose community would be split in the agreement, indicates that a wider range of interests should be consulted, guided by provincial interests, to arrive at an appropriate solution.

A third Chief Negotiator's report, released in January, 1992, recommended that the Minister undertake a consultation process, and outline the province's interests in the area. In order to provide a full and timely consultation process that will lead to the appropriate local structure in the area, the Minister decided to appoint an arbitrator with the mandate to review previous studies and information, consult broadly, and report within 60 days on new structural arrangements that will address provincial interests.

MANDATE

The arbitrator is appointed with a mandate to undertake the following process:

1. Review previous studies and information available with regard to the Greater London Area boundary issues, including the Chief Negotiator's reports dated January, 1991, July, 1991 and January, 1992.
2. Consult a broad range of interested parties, agencies, and elected people in the London/Middlesex area in such a manner as the arbitrator deems reasonable. Challenge consulted parties to consider and make suggestions reflecting provincial interests.
3. Make recommendations to the Minister within 60 days of appointment on new structural arrangements for the Greater London Area. All recommendations must reflect the provincial interests outlined in this document, with due consideration of local interests as outlined in the Chief Negotiator's reports and through consultations.

PROVINCIAL INTERESTS

Optimizing economic growth opportunities and growth management capabilities within the Greater London Area must be achieved as soon as possible.

Recommendations on the needed local government arrangements to make this possible must be with respect to a study area consisting of at least: the City of London, the Town of Westminster, and the Townships of Delaware, London, North Dorchester and West Nissouri. Principles that must be reflected in the solution emerging from the arbitration process are as follows:

Growth:

That there be a government structure, comprised of elected people and based on the principle of representation by population, with responsibility for at least planning and servicing to cover the area reasonably anticipated to be within the City of London's area of major influence for at least 20 years, including:

- future urban areas dependent upon London-centred infrastructure
- London Airport
- sufficient lands adjacent to the Highway 401/402 corridor

Environment:

That measures be in place to protect the environment by ensuring that:

- a) Urban sprawl does not take place within the study area and that development takes place on full urban services and at appropriate urban densities, and;
- b) Farmland and the rural character of the area not required for development are preserved

Costs:

The solution is to:

- a) Be least cost or low cost for the Province in terms of infrastructure investment
- b) Be such that compensation payments to offset the impact of assessment loss will be paid over a reasonable period of time and should, if possible, be covered by the municipality(ies) gaining in assessment,
- c) Be cognizant that any recommended transitional or implementation assistance from the Ministry of Municipal Affairs will be subject to consultation with the Ministry, and mindful of provincial constraints, and;
- d) Commit the future government, with responsibility for planning and servicing in the area, to make early infrastructure investments to permit economic growth

NOTE:

"Regional Government" for the current County of Middlesex and City of London is not a preferred option due to the availability of other growth management options, and the City's dominance when the principle of representation by population is applied.

ADMINISTRATION

The Ministry of Municipal Affairs will provide research, organizational, and administrative support to the arbitrator for the duration of the appointment.

TIMING

The arbitrator has 60 days for this task. It will commence January 30, 1992. The arbitrator will report to the Minister by March 30, 1992.

BIBLIOGRAPHY

- Beaton, W., 1967, Annexation, the Alteration of Municipal Boundaries in Ontario, W. R. Kellough and Associates.
- Brant, John, April 1992, Co-opportunity: Success Through Co-operative Independence, Greater London Area Arbitrator's Office, Ministry of Municipal Affairs, London, Ontario.
- City of London, 1992, Summary of Minutes of the Arbitration Public Hearings, Collected and Compiled by Planning Division Staff, February 18, 19, 25, 27, March 3, 5, 7, 9, 10, 12, and 14, 1992.
- City of London, February 12, 1992, Conformity to Provincial Interests and Principles for the Greater London Arbitration Process, Internal Document prepared by Planning Division, Department of Planning and Development, City of London, Ontario.
- City of London, March 6, 1992, City of London Proposed Boundary Adjustment, Internal Document prepared by Planning Division, Department of Planning and Development, City of London, Ontario.
- City of London, March 10, 1992, Corporation of the City of London Submission to the Arbitrator, Greater London Arbitration Process, Prepared by Planning Division, Department of Planning and Development, City of London, Ontario.
- Cooke, Dave, June 18, 1992, Statement by the Honourable Dave Cooke Minister of Municipal Affairs on London/Middlesex Annexation, Statement accompanying the tabling of Legislation, Queen's Park, Toronto, Ontario.
- Currie, Coopers and Lybrand, 1984, London-Middlesex Common Policies Study, Currie, Coopers and Lybrand Management Consultants.
- Griffiths, Susan K., 1988, "Regulating Growth Through Intergovernmental Agreement", in Colorado Municipalities, Denver, Colorado, July-August, 1988 (pp. 17-22).
- Huelsberg, Nancy A., and Lincoln, William R. (Eds.), 1985, Successful Negotiating in Local Government, International City Management Association, Washington, D.C.
- Jackson, Craig G., 1982, Proposed Annexation at the London-London Township Interface: A Critical Review and Assessment of Impact, Unpublished B.A. Thesis, Department of Geography, University of Western Ontario, London, Ontario.
- Johnson, John W., September 28, 1988, Intergovernmental Agreement between Douglas County and the Towns of Castle Rock and Parker, Colorado, Douglas County Board of Commissioners, Douglas County, Colorado.

Johnson, John W., October 27, 1988, Letter from John Johnson, Chief Planner, Planning Division, Douglas County, Colorado, to Douglas County Board of Commissioners.

Judson, John W. T., August 7, 1992, Discussion and Interview with John Judson, Lerner & Associates, Municipal and Planning Solicitor, Former City of London Councillor, and Legal Counsel for the Township of West Nissouri.

Kamin, Blair, and David Iyata, 1990, "Trying to Steer Clear of Others' Mistakes", Chicago Tribune, February 22, 1990.

Kelly, Eric Damian, August 11, 1989, Letter form Eric Kelly (Solicitor, Kelly & Potter Law Firm, Pueblo, Colorado, and Dean of Planning School, Iowa State University, Ames, Iowa) to Sylvia Lewis, Editor, Planning Magazine, American Planning Association, Chicago, Ill.

Klassen, Gary, May 8, 1991, Memorandum from Gary Klassen, Associate Planner, to Paul Meyette, Principal Planner (Red Deer Regional Planning Commission), regarding "Preparation and Submission of an Annexation Petition".

Lewis, Sylvia, 1988, "Border Wars", in Planning, American Planning Association, Chicago, Ill., October 1988, (pp. 8-14).

London Free Press, Various articles 1980-1992, London Free Press Printing Company Ltd., London, Ontario.

Marathon U.S. Realities Inc., Annexation Agreement by and among the Village of Glenview, Missionary Sisters Servants of the Holy Spirit and Marathon U.S. Realities Inc., February 6, 1990.

Meir, Richard K., 1991, A Time Space Approach to Locational Conflict Analysis -- The London Annexation Controversy, Unpublished B.A. Thesis, Department of Geography, University of Western Ontario, London, Ontario.

Ministry of Intergovernmental Affairs, April 1980, Report on the Brantford-Brant Local Government Pilot Project, Local Government Division, Ministry of Intergovernmental Affairs, Toronto, Ontario.

Ministry of Intergovernmental Affairs, August 1980, An Examination of the Brantford-Brant Local Government Pilot Project: An Alternative Annexation Process, Local Government Division, Ministry of Intergovernmental Affairs, Toronto, Ontario.

Ministry of Municipal Affairs, May 1983, Municipal Boundary Negotiations Act, 1981, Statutes of Ontario, 1981, Chapter 70.

Ministry of Municipal Affairs, 1985, A Guide to the Municipal Boundary Negotiations Act, Queens Printer for Ontario, Toronto, Ontario.

- Ministry of Municipal Affairs, January 30, 1992, Terms of Reference: Greater London Area Arbitration Process, Municipal Boundaries Branch, Ministry of Municipal Affairs, Toronto, Ontario.
- Ministry of Municipal Affairs, June 18, 1992, Background, London/Middlesex Act, 1992, Ministry of Municipal Affairs, Toronto, Ontario.
- Ministry of Municipal Affairs, June 18, 1992, Explanation of the London/Middlesex Act, 1992, Ministry of Municipal Affairs, Toronto, Ontario.
- Ministry of Municipal Affairs, June 18, 1992, London - Middlesex Act, 1992, (Draft Bill), Ministry of Municipal Affairs, Toronto, Ontario.
- Ministry of Municipal Affairs, June 18, 1992, Minister Resolves 11 year Annexation Issue with London/Middlesex Act, 1992, News Release from Ministry of Municipal Affairs, Toronto, Ontario.
- Montgomery, Byron, 1990, Annexation and Restructuring in Sarnia-Lambton: A model for Ontario County Government, Local Government Program Case Studies No. 4, Department of Political Science, The University of Western Ontario, London, Ontario.
- Office of the City Administrator, 1989, Let's Grow Together: Why the City of London Believes that Annexation will Benefit the Entire London Area, Pamphlet published by the Office of the City Administrator, Corporation of the City of London, London, Ontario.
- Pal, Leslie A., 1989, Public Policy Analysis: An Introduction, Nelson Canada, Scarborough, Ontario.
- Planning Division, June 1981, Land Development Strategy for London to 2010, Planning and Development Department, Corporation of the City of London, London, Ontario.
- Plunkett, T. J., and Lightbody, J., 1982, "Tribunals, Politics and the Public Interest: The Edmonton Annexation Case", Canadian Public Policy, Volume VIII:2 (Spring 1982), Guelph, Ontario.
- Red Deer Regional Planning Commission, October 4, 1991, Part A - Petition for Annexation, Submission to Alberta Local Authorities Board, Red Deer, Alberta.
- Regional Services Department, March 1992, Red Deer Regional Planning Commission Annexation Committee Policies and Procedures, Red Deer Regional Planning Commission, Alberta.
- Revised Statutes of Alberta, Extracts from the Municipal Government Act, RSA 1980, Chapter M-26, and Planning Act, RSA 1980, Chapter P-9, Edmonton, Alberta.

- Rogers Cable 13, 1992, The Greater London Area Annexation, Four Part Cable TV Series produced by Rogers Cable 13, in cooperation with the Ministry of Municipal Affairs, London, Ontario, 1992.
- Ross, I.C., 1977, London East 1854-1885: The Evolution, Incorporation and Annexation of a Satellite Municipality, Unpublished Masters Thesis, Department of Geography, University of Western Ontario, London, Ontario.
- Seigenthaler, Katherine, 1989, "Public Pressures: Citizens' Groups are Learning How the Game is Played", Chicago Tribune, September 27, 1989.
- Shaw, William, July 13, 1992, Letter from William G. A. Shaw, Director of Planning, Red Deer Regional Planning Commission (Alberta) to Bruce Curtis, Planner, City of London Planning Division, London, Ontario.
- Taylor, Don, July 1991, Chief Negotiator's Report to the Minister of Municipal Affairs on the London/Middlesex Committee Negotiation, Municipal Boundaries Branch, Ministry of Municipal Affairs, Toronto, Ontario.
- Taylor, Don, January 1992, Chief Negotiator's Report to the Minister of Municipal Affairs on the London/Middlesex Committee Negotiation, Municipal Boundaries Branch, Ministry of Municipal Affairs, Toronto, Ontario.
- Taylor, Don, July 30, 1992, Discussion and Interview with Don Taylor, Chief Negotiator, Boundaries Branch, Ministry of Municipal Affairs, Toronto, Ontario.
- Worrall, Reid A., 1980, The Evolution of the Boundaries of the City of London, Unpublished B.A. Thesis, Department of Geography, University of Western Ontario, London, Ontario.