

RE: ENBRIDGE GAS INC.

APPLICATION FOR RENEWAL OF FRANCHISE AGREEMENT WITH THE CORPORATION OF THE
MUNICIPALITY OF LEAMINGTON

ONTARIO ENERGY BOARD FILE NO. **EB-2022-0201**

IN THE MATTER OF the Municipal Franchise Act, R.S.O. 1990 c. M. 55, as amended

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order approving the terms and conditions upon which, and the period for which, Enbridge Gas Inc. will be given the right to construct and operate works for the distribution, transmission and storage of natural gas and the right to extend and add to the works in the Municipality of Leamington;

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order directing and declaring that the assent of the municipal electors of the Municipality of Leamington to the franchise agreement is not necessary;

AND IN THE MATTER OF an Application by Enbridge Gas Inc. for an Order cancelling and superseding those parts of the existing Certificate of Public Convenience and Necessity held by Enbridge Gas Inc. for the former municipalities within the Municipality of Leamington and replacing them with a Certificate of Public Convenience and Necessity to construct works to supply natural gas in the Municipality of Leamington.

ARGUMENT IN CHIEF OF THE MUNICIPALITY OF LEAMINGTON (“Leamington”)

1. Enbridge Gas Inc. (“Enbridge”) brings this application seeking to force Leamington to enter into a model franchise agreement (“Franchise Agreement”), to which Leamington objects. The primary basis relied upon by Enbridge to force Leamington into executing the current Franchise Agreement is that “everyone else in Ontario signed it and so Leamington should do the same.” Leamington objects for the reasons set out herein.

2. Leamington acknowledges that it has generally operated under the terms of a franchise agreement with Enbridge or its predecessor, in the form of the current Franchise Agreement or something substantial familiar. However, the agreement to operate under the Franchise Agreement has always been based upon the understanding that matters involving the *Drainage Act*¹, would be governed by the costs sharing provision of the *Drainage Act*. Municipalities and Enbridge operated upon this basis until the decision of the Court of Appeal for Ontario in *Union Gas Limited v. The Corporation of the Township of Norwich*, 2018 ONCA².

¹ R.S.O. 1990, c. D. 17

² On appeal from the order of Justice M.A. Garson of the Superior Court of Justice, dated September 7, 2016.

3. Section 26 of the Drainage Act indicates as follows:

In addition to all other sums lawfully assessed against the property of a public utility or road authority under this Act, and despite the fact that the public utility or road authority is not otherwise assessable under this Act, the public utility or road authority shall be assessed for and shall pay all the increase of cost of such drainage works caused by the existence of the works of the public utility or road authority.

4. It is clear from the wording of s. 26, above, that when utility relocation results in increased costs to the drainage works project, the utility is to pay the 100% of the associated costs.

5. The Franchise Agreement seeks to impose a term upon Leamington for a cost sharing arrangement which deviates from the provisions of s. 26 of the *Drainage Act*. Specifically, s 12 of the Franchise Agreement states:

The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company, except where the part of the gas system required to be moved is located in an unassumed road or in an unopened road allowance and the Corporation has not approved its location, in which case the Gas Company shall pay 100% of the relocation costs.

6. The Franchise Agreement dramatically alters the cost sharing arrangement. Instead of the utility company, Enbridge, paying 100% of the costs associated with relocation works, there is an obligation on the municipality to pay 35% while the utility company pays 65%.

7. The proposed cost sharing by Enbridge is not acceptable to Leamington.

8. The decision in Norwich, very clearly states that the Court held Norwich to the cost sharing arrangement in the Franchise Agreement, because Norwich voluntarily contracted out of the *Drainage Act* cost sharing prescribed by s. 26, which requires the utility company, in this case Union Gas (now Enbridge) to pay 100% of the costs. In objecting to entering into the Franchise Agreement now, Leamington is clearly articulating that it does not agree to contract out of the *Drainage Act*. Despite this clear indication from Leamington, Enbridge insists that Leamington enter into the Franchise Agreement without amendment to recognize cost sharing provisions of the *Drainage Act*, which would maintain the historical relationship between the parties whereby the utility provider, Enbridge, pay 100% of the associated costs.

9. The Court of Appeal for Ontario has clearly, very clearly, said that the cost sharing is open to negotiations before a municipality is required to enter into the Franchise Agreement. Enbridge has failed to enter into any type of negotiation with Leamington, let alone good faith negotiations

and has simply said “sign this, like everyone else”. That flies in the face of a fundamental pillar of the justice system in Ontario, which is the right of parties to contract.

10. Furthermore, what has not been disclosed by Enbridge although clearly in their knowledge, is how many of the municipalities who have executed the Franchise Agreement did so before the decision in Norwich. That is a fundamental factor for consideration. It is not a stretch by any means to suggest that a municipality could have agreed to the form of Franchise Agreement without knowing the decision in Norwich or at the very least its implications on the cost sharing. To put it another way, it is likely that if a municipality was aware of the Norwich decision, it would have objected to executing the Franchise Agreement.

11. Despite the position taken by Enbridge, Leamington maintains that it is unique with respect to drainage. Enbridge indicates that Leamington has not provided evidence of its uniqueness. This is also not true. Whether the burden lies with Leamington to prove its uniqueness is very much debatable. The herein application belongs to Enbridge. It bears the corresponding burden of proof with respect to why the Franchise Agreement should be, executed without amendment, which includes properly replying to the position(s) taken by Leamington, including that of uniqueness. The burden does not rest with Leamington.

12. Leamington states that even if it does bear the burden of proving its uniqueness, which is not admitted, the burden has been met. The Drainage Superintendent for Leamington addressed this issue squarely in her affidavit³:

4. The Municipality is home to 445 municipal drains, covering 436 kilometers. Attached hereto and marked as Exhibit “A” to this my affidavit is a map showing the various drainage systems in the Municipality, taken from the Municipality’s GIS mapping system. Further attached hereto and marked as Exhibit “B” to this my affidavit is a map showing the various drainage systems in the Municipality, taken from the Municipality’s GIS mapping system, which includes concession roads.

³ Affidavit of Lu-Ann Marentette sworn November 8, 2022, para 4-9.

5. *The drainage systems in the Municipality are unique.*
6. *The Municipality, like much of Essex County, is very flat. There is little topographic relief. Outside of the Municipality and Essex County, the land topography has a rolling landscape with ample drainage to provide sufficient drainage for lands and roads.*
7. *In addition to having very flat topography, Leamington also has a large majority of its municipal drains along roadways and within the right of way. With drains being located in the right of way and along roadways, it creates conflicts with various utilities including gas. Attached hereto and marked as Exhibit "C" to this my affidavit is a map depiction taken from the Municipality's GIS mapping system along Mersea Road 6 and Highway 77 showing the conflict between the gas main and the municipal drain.*
8. *Given the flat lands that exist in the Municipality, there is limited flexibility with available depths and grades to satisfactorily drain lands contributing to a particular drain, whether it is an open or covered drain. As such, these depths and grades are typically fixed and cannot be adjusted without significant and costly improvements to the drainage such as by adding pumps or diversion.*
9. *Further complicating the Municipality's drainage system is the fact that a portion of the Municipality (located in the South East) is approximately 1.79 meters below sea level. As such, the Municipality has to employ the use of 10 pump stations. These 10 pump stations contain a total of 7 electric powered pumps and 7 diesel powered*

pumps, which range in size from 24" to 48". These pump stations are necessary to drain approximately 22.8 square km's of the Municipality.

10. Leamington's position in summary is :

- A) The decision in Norwich changed the landscape with respect the Franchise Agreement where drainage works are involved. Enbridge has failed to recognize the change from the decision and has in turn sought to take advantage of the decision of the Court of Appeal by refusing to negotiate changes the model Franchise Agreement.
- B) Leamington does not agree to contract out of the *Drainage Act* provisions and in particular s. 26.
- C) Leamington has unique drainage concerns, as detailed above, especially in light of the flat topography in Essex County
- D) It is respectfully, submitted that the Ontario Energy Board has no authority to force Leamington to contract out of the *Drainage Act* and therefore cannot impose the terms of the Franchise Agreement upon Leamington.

11. Leamington requests that s. 12(d) of the Franchise Agreement be amended to read as follows:

*The total relocation costs as calculated above shall be paid 35% by the Corporation and 65% by the Gas Company, except where the part of the gas system required to be moved is located in an unassumed road or in an unopened road allowance and the Corporation has not approved its location, **or the relocation is required pursuant to the report of an engineer appointed under the Drainage Act, R.S.O. 1990, c. D.17 or the costs have been assessed pursuant to section 26 of the Drainage Act, R.S.O. 1990, c. D.17** in which case the Gas Company shall pay 100% of the relocation costs.*

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 21st day of February 2023.

Drainage Act

R.S.O. 1990, CHAPTER D.17

Consolidation Period: From June 30, 2021 to the [e-Laws currency date](#).

Last amendment: 2021, c. 4, Sched. 6, s. 42.

Legislative History: 1992, c. 32, s. 8; 1998, c. 18, Sched. A, s. 1; 1999, c. 12, Sched. A, s. 9; 2001, c. 9, Sched. A; 2002, c. 17, Sched. F, Table; 2006, c. 19, Sched. A, s. 6; 2006, c. 21, Sched. C, s. 107; 2006, c. 32, Sched. C, s. 14; 2006, c. 35, Sched. C, s. 27; 2009, c. 33, Sched. 1, s. 9; 2010, c. 16, Sched. 1, s. 2; 2017, c. 23, Sched. 5, s. 27; 2019, c. 7, Sched. 19; 2020, c. 18, Sched. 4; 2021, c. 4, Sched. 6, s. 42.

CONTENTS

1.	Definitions	
2.	Mutual agreement re drainage works	MUTUAL AGREEMENT DRAINS
3.	Drainage works constructed on requisition	REQUISITION DRAINS
4.	Petition	PETITION DRAINS
5.	Drainage works constructed on petition	
6.	Notice that environmental appraisal is required	
7.	Benefit cost statement	
8.	Appointment of engineer	
9.	Determination of petition compliance	
10.	Preliminary report	ENGINEER'S REPORT
11.	Duties of engineer	
12.	Power to enter on lands	
13.	Duties re survey	
14.	Providing capacity for covered drainage works	
15.	Sufficient outlet	
16.	Report re disposal of material taken from drainage works	
17.	Bridges and culverts on roads	
18.	Construction of bridges, etc.	
19.	Engineer may recommend abandonment of drain	
20.	Continuing drainage works beyond limits of municipality	ASSESSMENTS
21.	Engineer to distinguish assessments	
22.	Assessment for benefit	
23.	Assessment for liability	
24.	Assessment for special benefit	
25.	Engineer may assess a block, etc.	
26.	Increased cost, how borne	
27.	Assessment where drainage works continued beyond limits of municipality	
28.	Assessing lands in neighbouring municipality	ALLOWANCES AND COMPENSATION
29.	Allowances for right of way, etc.	
30.	Amount for damage to ornamental trees, etc.	
31.	Allowance for existing drains	
32.	Allowance for damage due to insufficient outlet	
33.	Allowance for loss of access	
34.	Prior assessments to be taken into consideration	
35.	Assessment may be shown in money	
36.	Assessment of affected land	

<u>37.</u>	Engineer to assess separately
<u>38.</u>	Variation in assessments for maintenance and repair
<u>39.</u>	Time for filing report
<u>40.</u>	Engineer's finding, drainage works not required, etc.
<u>41.</u>	Notice of drainage works
<u>42.</u>	Consideration of report
<u>43.</u>	Liability of original petitioners
<u>44.</u>	Sufficiency of petition
<u>45.</u>	Adoption of report
<u>46.</u>	Notice of court of revision to be sent to local municipalities and to owners
	<u>APPEALS</u>
<u>47.</u>	Appeal from report to referee
<u>48.</u>	Appeal to Tribunal
<u>49.</u>	Appeal by conservation authority
<u>50.</u>	Appeal by municipality
<u>51.</u>	Powers of Tribunal
<u>52.</u>	Appeals
<u>53.</u>	Adjournment of court or Tribunal
<u>54.</u>	Appeal to Tribunal
<u>55.</u>	Evidence by engineer
<u>56.</u>	Clerk to alter assessments
<u>57.</u>	Referral back to engineer
<u>58.</u>	By-law may be passed
<u>59.</u>	Meeting to consider contract price
<u>60.</u>	Municipalities required to raise cost
<u>61.</u>	Imposition of special assessment
<u>62.</u>	Amendment of by-law
	<u>CONSTRUCTION</u>
<u>63.</u>	Powers of contractor
<u>64.</u>	Appeal by owner of land
	<u>SPECIAL PROVISIONS</u>
<u>65.</u>	Changes in assessment
<u>67.</u>	Tenant's covenant to pay taxes, when to include drainage assessments
<u>68.</u>	Registration of by-law
<u>69.</u>	Public utility or road authority, option to construct drainage works
<u>70.</u>	Fees of engineer part of cost
<u>71.</u>	Account of engineer
<u>72.</u>	Review by Tribunal
<u>73.</u>	Costs to be deemed part of cost of drainage works
	<u>MAINTENANCE, REPAIR AND IMPROVEMENT</u>
<u>74.</u>	Maintenance of drainage works and cost
<u>75.</u>	Service of copy of by-law on municipality liable for contribution and appeal from by-law
<u>76.</u>	Varying original assessments for maintenance
<u>78.</u>	Improving, upon examination and report of engineer
<u>79.</u>	Power to compel repairs
<u>80.</u>	Person responsible for obstruction to remove it on notice
<u>81.</u>	Removal of minor obstructions
<u>82.</u>	Municipality may sue for cost of damage to drainage works
<u>84.</u>	Abandonment of all or part of drainage works
	<u>AMENDMENTS TO ENGINEER'S REPORT</u>
<u>84.1</u>	Amendments to engineer's report
	<u>GRANTS</u>
<u>85.</u>	Provincial grants
<u>86.</u>	When grants not to be made
<u>87.</u>	Payment of grant
<u>88.</u>	Application for grant
<u>89.</u>	Distribution
<u>90.</u>	Reduction of grant
	<u>DIRECTOR</u>
<u>91.</u>	Director
<u>92.</u>	Persons to advise and assist
	<u>DRAINAGE SUPERINTENDENT AND COMMISSIONERS</u>

<u>93.</u>	Appointment of drainage superintendents	
<u>95.</u>	Appointment of commissioner	
<u>96.</u>	Offence	
		<u>COURTS OF REVISION</u>
<u>97.</u>	Court of revision	
		<u>POWERS OF TRIBUNAL</u>
<u>98.</u>	Tribunal	
<u>99.</u>	Proceeding commenced by notice	
<u>100.</u>	Extension of time	
<u>101.</u>	Decision final	
		<u>REFEREE</u>
<u>102.</u>	Appointment of referee	
<u>103.</u>	Notice of time and place of hearing	
<u>104.</u>	Clerk of court	
<u>105.</u>	Sheriffs, etc., to assist referee	
<u>106.</u>	Powers of referee	
<u>107.</u>	Referee may make rules	
<u>108.</u>	Assessment of costs	
<u>109.</u>	Costs in discretion of referee	
<u>110.</u>	Tariff of costs	
<u>111.</u>	Proceedings instituted by notice	
<u>112.</u>	Affidavits filed before motion	
<u>113.</u>	Extension of time for appeal	
<u>114.</u>	When referee proceeds on view	
<u>115.</u>	Clerk to forward notice of filing	
<u>116.</u>	Copy of decision to be sent to Minister and municipality	
<u>117.</u>	Amendment of by-law	
<u>118.</u>	Assessing of costs payable	
<u>119.</u>	Transfer to other court	
<u>120.</u>	Actions may be transferred to referee	
		<u>APPEAL TO DIVISIONAL COURT</u>
<u>121.</u>	Appeal from decision of referee	
		<u>GENERAL</u>
<u>122.</u>	Interprovincial drainage works, from Ontario into adjoining province	
<u>123.</u>	Initiation of drainage works in unorganized territory	
<u>124.</u>	Authorization of emergency work	
<u>125.</u>	Regulations	

Definitions

1 In this Act,

“benefit” means the advantages to any lands, roads, buildings or other structures from the construction, improvement, repair or maintenance of a drainage works such as will result in a higher market value or increased crop production or improved appearance or better control of surface or subsurface water, or any other advantages relating to the betterment of lands, roads, buildings or other structures; (“avantage”)

“benefit cost statement” means a statement relating the anticipated benefits expressed in dollars to the total estimated cost of the drainage works; (“état coût-avantages”)

“built-up area” means an area of land where,

- not less than 50 per cent of the frontage upon one side of a road for a distance of not less than 200 metres is occupied by dwellings, buildings used for business purposes, schools or churches, or
- not less than 50 per cent of the frontage upon both sides of a road for a distance of not less than 100 metres is occupied by dwellings, buildings used for business purposes, schools or churches, or
- not more than 200 metres of a road separates any land described in clause (a) or (b) from any other land described in clause (a) or (b), or
- a plan of subdivision has been registered; (“agglomération”)

“commissioner” means a commissioner appointed by a municipality by by-law; (“commissaire”)

“conservation authority” means a conservation authority established under the *Conservation Authorities Act*; (“office de protection de la nature”)

“court of revision” means a court of revision constituted under this Act; (“tribunal de révision”)

“Director” means the Director appointed for the purposes of this Act; (“directeur”)

“drainage superintendent” means a drainage superintendent appointed by a municipality by by-law; (“directeur des installations de drainage”)

“drainage works” includes a drain constructed by any means, including the improving of a natural watercourse, and includes works necessary to regulate the water table or water level within or on any lands or to regulate the level of the waters of a drain, reservoir, lake or pond, and includes a dam, embankment, wall, protective works or any combination thereof; (“installations de drainage”)

“engineer” means an engineer registered under the *Professional Engineers Act* or a surveyor registered under the *Surveyors Act*, or a partnership, association of persons or corporation that holds a certificate of authorization under the *Professional Engineers Act* or the *Surveyors Act*, as the case may be; (“ingénieur”)

“improvement” means any modification of or addition to a drainage works intended to increase the effectiveness of the system; (“amélioration”)

“initiating municipality” means the local municipality undertaking the construction, improvement, repair or maintenance of a drainage works to which this Act applies; (“municipalité initiatrice”)

“injuring liability” means the part of the cost of the construction, improvement, maintenance or repair of a drainage works required to relieve the owners of any land or road from liability for injury caused by water artificially made to flow from such land or road upon any other land or road; (“responsabilité des dommages”)

“lateral drain” means a drain that is designed for the drainage of one property and that begins and ends on the same property; (“drain latéral”)

“maintenance” means the preservation of a drainage works; (“entretien”)

“Minister” means the Minister of Agriculture, Food and Rural Affairs or any other member of the Executive Council to whom responsibility for the administration of this Act is assigned or transferred under the *Executive Council Act*; (“ministre”)

“outlet liability” means the part of the cost of the construction, improvement or maintenance of a drainage works that is required to provide such outlet or improved outlet; (“responsabilité de la sortie”)

“owner” includes a guardian of property and a guardian, executor, administrator or trustee in whom land is vested; (“propriétaire”)

“preliminary report” means an engineer’s report containing the information specified in section 10; (“rapport préliminaire”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“property” means a parcel of land that by the *Assessment Act* is required to be separately assessed; (“propriété”)

“public utility” means a person having jurisdiction over any water works, gas works, electric heat, light and power works, telegraph and telephone lines, railways however operated, street railways and works for the transmission of gas, oil, water or electrical power or energy, or any similar works supplying the general public with necessities or conveniences; (“services publics”)

“referee” means the referee appointed under this Act; (“arbitre”)

“regulations” means the regulations made under this Act; (“règlements”)

“repair” means the restoration of a drainage works to its original condition; (“réparation”)

“report” means an engineer’s report containing the information specified in section 8; (“rapport”)

“road authority” means a body having jurisdiction and control of a common and public highway or road, or any part thereof, including a street, bridge and any other structure incidental thereto and any part thereof; (“office de la voirie”)

“special benefit” means any additional work or feature included in the construction, repair or improvement of a drainage works that has no effect on the functioning of the drainage works; (“avantage particulier”)

“sufficient outlet” means a point at which water can be discharged safely so that it will do no damage to lands or roads; (“sortie appropriée”)

“Tribunal” means the Agriculture, Food and Rural Affairs Appeal Tribunal continued under the *Ministry of Agriculture, Food and Rural Affairs Act*. (“Tribunal”) R.S.O. 1990, c. D.17, s. 1; 1992, c. 32, s. 8; 1999, c. 12, Sched. A, s. 9 (1); 2002, c. 17, Sched. F, Table; 2009, c. 33, Sched. 1, s. 9; 2020, c. 18, Sched. 4, s. 1.

Section Amendments with date in force (d/m/y)

1992, c. 32, s. 8 - 03/04/1995; 1999, c. 12, Sched. A, s. 9 (1) - 22/12/1999

2002, c. 17, Sched. F, Table - 01/01/2003

2009, c. 33, Sched. 1, s. 9 - 15/12/2009

2020, c. 18, Sched. 4, s. 1 (1, 2) - 30/06/2021

MUTUAL AGREEMENT DRAINS

Mutual agreement re drainage works

2 (1) When two or more owners of land desire to construct or improve a drainage works on any of their lands and are willing to pay the cost thereof, they may enter into a written agreement for the construction, improvement, financing and maintenance of such drainage works, which shall include the following:

1. A reference to the *Drainage Act*.
2. Descriptions of the lands of the parties to the agreement sufficient for the purposes of registration in the proper land registry office.
3. The estimated cost of the drainage works.
4. A description of the drainage works, including its nature and approximate location.
5. The proportion of the cost of the construction, improvement and maintenance of the drainage works that is to be borne by each of the owners of the lands.
6. The date the agreement was entered into.
7. An affidavit of a subscribing witness to the execution of the agreement by the parties sufficient for the purposes of registration in the proper land registry office. R.S.O. 1990, c. D.17, s. 2 (1).

Filing of agreement

(2) A copy of the agreement and the plans and schedules, if any, of the proposed drainage works may be filed with the clerk of the local municipality in which the land or any part thereof is situate, and the agreement or an executed copy thereof may be registered in the proper land registry office. R.S.O. 1990, c. D.17, s. 2 (2).

Registered agreement binding on successors

(3) An agreement made under this section shall, upon registration in the proper land registry office of the agreement or an executed copy thereof, be binding upon the heirs, executors, administrators, successors and assigns of each party to the agreement. R.S.O. 1990, c. D.17, s. 2 (3).

Exception

(4) The subsequent provisions of this Act do not apply to any drainage works constructed under this section. R.S.O. 1990, c. D.17, s. 2 (4).

REQUISITION DRAINS

Drainage works constructed on requisition

3 (1)-(17) REPEALED: 2010, c. 16, Sched. 1, s. 2 (1).

Existing ditches

(18) Every ditch constructed under *The Ditches and Watercourses Act*, being chapter 109 of the Revised Statutes of Ontario, 1960, shall be maintained in accordance with the award of the engineer providing for such maintenance until such ditch is brought under the provisions of this Act by petition under section 4. 2010, c. 16, Sched. 1, s. 2 (2).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. A, s. 6 (1) - 22/06/2006

2010, c. 16, Sched. 1, s. 2 (1, 2) - 25/10/2010

PETITION DRAINS

Petition

4 (1) A petition for the drainage by means of a drainage works of an area requiring drainage as described in the petition may be filed with the clerk of the local municipality in which the area is situate by,

- (a) the majority in number of the owners, as shown by the last revised assessment roll of lands in the area, including the owners of any roads in the area;
- (b) the owner or owners, as shown by the last revised assessment roll, of lands in the area representing at least 60 per cent of the hectarage in the area;
- (c) where a drainage works is required for a road or part thereof, the engineer, road superintendent or person having jurisdiction over such road or part, despite subsection 61 (5);
- (d) where a drainage works is required for the drainage of lands used for agricultural purposes, the Director. R.S.O. 1990, c. D.17, s. 4 (1).

Form of petition

(2) A petition under subsection (1) shall be in the form prescribed by the regulations and, where it is filed by an owner or owners under clause (1) (a) or (b), shall be signed by such owner or owners. R.S.O. 1990, c. D.17, s. 4 (2).

Petition where area lies on each side of boundary line

(3) Where it is desired to construct a drainage works for the drainage of an area composed of lands or roads lying on each side of a boundary line between two or more local municipalities, the council of any of them may proceed upon a petition as required by this Act in all respects, including the sending of notices, as if such area were entirely within the limits of the municipality. R.S.O. 1990, c. D.17, s. 4 (3).

Person deemed owner

(4) Where a person who is the owner of land, but does not appear by the last revised assessment roll of the municipality to be the owner, is a petitioner, the person shall be deemed an owner if the person's ownership is proved to the satisfaction of the clerk, and, if the person who appears by the assessment roll to be the owner is a petitioner, the person's name shall be disregarded in determining the sufficiency of the petition. R.S.O. 1990, c. D.17, s. 4 (4).

Persons jointly assessed

(5) Where two or more persons are jointly assessed for a property, in determining the sufficiency of a petition, they shall be deemed to be one owner. R.S.O. 1990, c. D.17, s. 4 (5).

Drainage works constructed on petition

5 (1) Where a petition in accordance with section 4 has been filed, the council shall forthwith consider the petition and shall, within thirty days after the filing of the petition,

- (a) if it decides not to proceed with the drainage works, send notice of its decision to each petitioner; or
- (b) if it decides to proceed with the drainage works, send notice of the petition and of its decision to the prescribed persons. R.S.O. 1990, c. D.17, s. 5 (1); 2010, c. 16, Sched. 1, s. 2 (3, 4); 2020, c. 18, Sched. 4, s. 2.

Appeal to Tribunal

(2) Where a petitioner,

- (a) receives notice under clause (1) (a) of a decision of the council not to proceed with the drainage works; or
- (b) has not, within thirty days after the filing of the petition, received notice of a decision of the council,

the petitioner may appeal to the Tribunal or, where lands used for agricultural purposes are included in the area described in the petition, the Minister may refer the matter to the Tribunal, and the Tribunal may confirm the decision of the council or direct the council to make such decision and to take such action as the council is authorized to take under this Act and as the Tribunal considers proper. R.S.O. 1990, c. D.17, s. 5 (2); 2006, c. 19, Sched. A, s. 6 (1).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. A, s. 6 (1) - 22/06/2006

2010, c. 16, Sched. 1, s. 2 (3, 4) - 25/10/2010

2020, c. 18, Sched. 4, s. 2 - 30/06/2021

Notice that environmental appraisal is required

6 (1) A person who is prescribed by the regulations and who has received notice of the petition under clause 5 (1) (b) may, within 30 days after receiving the notice, send to the council of the initiating municipality a notice that an environmental appraisal of the effects of the drainage works on the area is required. 2020, c. 18, Sched. 4, s. 3.

Cost

(1.1) The cost of an environmental appraisal required under subsection (1) shall be paid by the person who sends the notice requiring it. 2020, c. 18, Sched. 4, s. 3.

Authorization for environmental appraisal

(2) The council of the initiating municipality may obtain an environmental appraisal on its own initiative, the cost of which shall be paid by the municipality from its general funds. R.S.O. 1990, c. D.17, s. 6 (2).

Appeal

(3) The party requesting the environmental appraisal or the council of the initiating municipality, as the case may be, within forty days of receiving the account therefor, may appeal to the Tribunal, and the Tribunal may confirm or vary the account as it considers proper. R.S.O. 1990, c. D.17, s. 6 (3); 2006, c. 19, Sched. A, s. 6 (2).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. A, s. 6 (2) - 22/06/2006

2020, c. 18, Sched. 4, s. 3 - 30/06/2021

Benefit cost statement

7 (1) The council of any local municipality to which notice was given under subsection 5 (1) or the Minister may send to the council of the initiating municipality within thirty days a notice that a benefit cost statement is required and the cost of preparing such statement shall be paid by the party who required it. R.S.O. 1990, c. D.17, s. 7 (1).

Idem

(2) The council of the initiating municipality may obtain a benefit cost statement on its own initiative, the cost of which shall be paid by the municipality from its general funds. R.S.O. 1990, c. D.17, s. 7 (2).

Appointment of engineer

8 (1) Where the council of the initiating municipality has decided to proceed with the drainage works described in a petition, the council shall by by-law or resolution appoint an engineer to make an examination of the area requiring drainage as described in the petition and to prepare a report which shall include,

- (a) plans, profiles and specifications of the drainage works, including a description of the area requiring drainage;
- (b) an estimate of the total cost thereof;
- (c) an assessment of the amount or proportion of the cost of the works to be assessed against every parcel of land and road for benefit, outlet liability and injuring liability;
- (d) allowances, if any, to be paid to the owners of land affected by the drainage works; and
- (e) such other matters as are prescribed or provided for under this Act. R.S.O. 1990, c. D.17, s. 8 (1); 2020, c. 18, Sched. 4, s. 4.

Where engineer is a corporation, etc.

(2) Where the engineer appointed under this Act is a corporation, association or partnership, the appointee shall, within ten days of the date of appointment, notify the council of the name of the individual engineer who will have charge of the project and who will remain in charge until the report is filed and if for any reason the designated engineer ceases to be employed by the appointee, the appointee shall within ten days of such time notify the council of the name of his or her replacement. R.S.O. 1990, c. D.17, s. 8 (2).

Appeal or referral to Tribunal

(3) Where the council fails to appoint an engineer within sixty days after giving notice of its decision to proceed, any petitioner may appeal to the Tribunal or, where the petition was signed by the Director or where lands used for agricultural

purposes are included in the area to be drained, the Minister may refer the matter to the Tribunal, and the Tribunal may direct the council to take such action as the council is authorized to take under this Act and as the Tribunal considers proper. R.S.O. 1990, c. D.17, s. 8 (3); 2006, c. 19, Sched. A, s. 6 (1).

One report on two or more petitions

(4) The council of the initiating municipality may instruct the engineer to make one report with respect to two or more petitions requiring drainage in two or more adjoining areas that require drainage. R.S.O. 1990, c. D.17, s. 8 (4).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. A, s. 6 (1) - 22/06/2006

2020, c. 18, Sched. 4, s. 4 - 30/06/2021

Determination of petition compliance

9 (1) The engineer shall, before making an examination and report, cause the clerk of the local municipality to send at least seven days notice in the form prescribed by the regulations to each owner of lands within the area requiring drainage as described in the petition and to each public utility that may be affected by the petition setting out the time and place of an on-site meeting with the engineer to examine the area. R.S.O. 1990, c. D.17, s. 9 (1); 2010, c. 16, Sched. 1, s. 2 (5).

Duty of engineer

(2) At the on-site meeting, the engineer shall,

- (a) determine the area requiring drainage;
- (b) determine whether the petition complies with section 4 for the area requiring drainage; and
- (c) where the engineer is of opinion that the petition fails to so comply, establish the requirements for a petition to comply with section 4. R.S.O. 1990, c. D.17, s. 9 (2).

Idem

(3) Where the engineer is of opinion that the petition complies with section 4, the engineer shall proceed to prepare a report or a preliminary report, as the case may be. R.S.O. 1990, c. D.17, s. 9 (3).

Report of engineer

(4) Where the engineer is of opinion that the petition does not comply with section 4, the engineer shall so report to the council of the initiating municipality stating wherein the petition is deficient, the amount of the engineer's fees and by whom they shall be paid, and the council shall forthwith send a copy of such opinion to each petitioner. R.S.O. 1990, c. D.17, s. 9 (4).

Fees to form part of costs

(5) Where, within sixty days of the engineer's reporting to council under subsection (4), a petition that complies with the requirements of section 4 is filed with the clerk of the council,

- (a) the council shall instruct the engineer to prepare a report, or a preliminary report, as the case may be; and
- (b) the fees mentioned in subsection (4) shall form part of the cost of the drainage works. R.S.O. 1990, c. D.17, s. 9 (5).

Section Amendments with date in force (d/m/y)

2010, c. 16, Sched. 1, s. 2 (5) - 25/10/2010

Preliminary report

10 (1) Where the council of the initiating municipality deems it expedient, it may, or if it has received notice under section 6 that an environmental appraisal is required, it shall instruct the engineer to prepare a preliminary report containing a sketched plan of the drainage works and an estimate of the cost thereof in so far as it is practicable to do so, and which shall include the environmental appraisal, if any, and the benefit cost statement, if any, and the engineer shall forthwith prepare and file such a preliminary report with the council. R.S.O. 1990, c. D.17, s. 10 (1).

Consideration of report

(2) Upon the filing of the preliminary report, the council of the initiating municipality shall cause the clerk to send the prescribed persons a copy of the preliminary report and a notice of the date of the council meeting at which the preliminary report will be considered. 2020, c. 18, Sched. 4, s. 5 (1).

Withdrawal from and additions to petition

(3) At the meeting referred to in subsection (2), the council shall consider the preliminary report and shall give to any person who signed the petition an opportunity to withdraw from it by filing a signed withdrawal with the clerk, and to any person present who owns land in the area requiring drainage and has not signed the petition an opportunity to do so. R.S.O. 1990, c. D.17, s. 10 (3); 2010, c. 16, Sched. 1, s. 2 (6).

Cost of petition and preliminary report

(4) If at the end of the meeting the petition does not contain a sufficient number of names to comply with section 4, the original petitioners are chargeable in equal shares with and liable to the municipality for the expenses incurred by the municipality in connection with the petition and preliminary report, excluding the amount of any grants and the costs of any environmental appraisal or benefit cost statement, and the sum with which each of such petitioners is chargeable shall be entered upon the collector's roll for the municipality against the lands of the person liable and shall be collected in the same manner as real property taxes. R.S.O. 1990, c. D.17, s. 10 (4).

Instruction to engineer

(5) If at the end of the meeting, the petition contains a sufficient number of names to comply with section 4, the council may instruct the engineer to proceed with the preparation of a report. R.S.O. 1990, c. D.17, s. 10 (5).

Appeal to Tribunal

(6) Where the council of the initiating municipality fails to instruct the engineer to proceed with the preparation of a report, any petitioner may appeal to the Tribunal or, where lands used for agricultural purposes are included in the area to be drained, the Minister may refer the matter to the Tribunal and the Tribunal may direct the council to take such action as the council is authorized to take under this Act and as the Tribunal considers proper. R.S.O. 1990, c. D.17, s. 10 (6); 2006, c. 19, Sched. A, s. 6 (3).

Same

(7) Where any party mentioned in subsection (2) is dissatisfied with the environmental appraisal, an appeal lies to the Tribunal. R.S.O. 1990, c. D.17, s. 10 (7); 2006, c. 19, Sched. A, s. 6 (1); 2020, c. 18, Sched. 4, s. 5 (2).

Referral to Tribunal

(8) The following persons may refer the environmental appraisal to the Tribunal:

1. If lands used for agricultural purposes are included in the area to be drained, the Minister.
2. In any other case, the prescribed persons. 2020, c. 18, Sched. 4, s. 5 (3).

Powers of Tribunal

(9) An appeal under subsection (7) or a reference under subsection (8) shall be made within forty days after the meeting referred to in subsection (2), and the Tribunal may confirm the environmental appraisal or direct that it be reconsidered in such respects as the Tribunal considers proper. R.S.O. 1990, c. D.17, s. 10 (9); 2006, c. 19, Sched. A, s. 6 (1).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. A, s. 6 (1, 3) - 22/06/2006

2010, c. 16, Sched. 1, s. 2 (6) - 25/10/2010

2020, c. 18, Sched. 4, s. 5 (1-3) - 30/06/2021

ENGINEER'S REPORT

Duties of engineer

11 The engineer shall, to the best of the engineer's skill, knowledge, judgment and ability, honestly and faithfully, and without fear of, favour to or prejudice against any person, perform the duty assigned to the engineer in connection with any drainage works and make a true report thereon. R.S.O. 1990, c. D.17, s. 11.

Power to enter on lands

12 (1) The engineer or any of the engineer's assistants when engaged in the performance of their duties during or after the examination of the locality may enter, measure along, ascertain the bearings of any line, plant the stakes that they consider necessary for the performance of the work and take levels on the land of any person. R.S.O. 1990, c. D.17, s. 12 (1).

Offence, obstruction of engineer

(2) Every person who wilfully interferes with or obstructs the engineer or any of the engineer's assistants in the exercise of the powers conferred by this section is guilty of an offence and on conviction is liable to a fine of not more than \$1,000. R.S.O. 1990, c. D.17, s. 12 (2).

Duties re survey

13 (1) The engineer in making a survey shall establish sufficient bench marks or permanent levels by which a drainage works may be governed, and shall in the report record the description, location and elevation of every bench mark or permanent level. R.S.O. 1990, c. D.17, s. 13 (1).

Offence, interference with bench marks

(2) Every person who interferes with, removes or destroys any bench mark or permanent level established under this section is guilty of an offence and on conviction is liable to a fine of not more than \$1,000. R.S.O. 1990, c. D.17, s. 13 (2).

Providing capacity for covered drainage works

14 (1) Subject to subsection (2), the construction of a drainage works by means of the improvement of a natural watercourse shall not include a covered drainage works, unless the part of the drainage works in which the covered drainage works is included provides capacity for all the surface water from the lands and roads draining naturally towards and into it and for all the waters from all the lands and roads assessed for the drainage works. R.S.O. 1990, c. D.17, s. 14 (1).

Covered drainage works may be employed

(2) A covered drainage works may be employed in conjunction with an open drain provided that the total capacity of the system is sufficient for the purposes of subsection (1). R.S.O. 1990, c. D.17, s. 14 (2).

Sufficient outlet

15 Subject to section 32, every drainage works constructed under this Act shall be continued to a sufficient outlet. R.S.O. 1990, c. D.17, s. 15.

Report re disposal of material taken from drainage works

16 The engineer in the report shall determine in what manner the material taken from any drainage works in the construction, improvement, repair or maintenance thereof shall be disposed of. R.S.O. 1990, c. D.17, s. 16.

Bridges and culverts on roads

17 The engineer in the report shall provide for the construction, enlargement or other improvement of any bridges or culverts throughout the course of the drainage works rendered necessary by the drainage works crossing any public road or part thereof. R.S.O. 1990, c. D.17, s. 17.

Construction of bridges, etc.

18 Subject to section 33, the engineer in the report shall provide for the construction or the replacement, enlargement or other improvement of bridges, culverts, pumping stations and water gates rendered necessary by the drainage works including the cost of the construction or the replacement, enlargement or other improvement of the bridges, pumping stations, water gates and culverts, in the assessment for the construction, improvement, maintenance or repair of the drainage works, and they shall, for the purposes of maintenance or repair, be deemed part of the drainage works. R.S.O. 1990, c. D.17, s. 18.

Engineer may recommend abandonment of drain

19 The engineer in the report may recommend the abandonment of any drain or part thereof that is no longer useful or that is being supplanted by a new drainage works. R.S.O. 1990, c. D.17, s. 19.

Continuing drainage works beyond limits of municipality

20 (1) Where it is considered necessary to continue a drainage works beyond the limits of the initiating municipality, the engineer employed by the council of the municipality may continue the drainage works on or along or across any road allowance or other boundary between any two or more municipalities, and from any such road allowance or other boundary into or through any municipality until the engineer reaches a sufficient outlet. R.S.O. 1990, c. D.17, s. 20 (1).

Where drainage works not deemed outside initiating municipality

(2) A drainage works shall not be deemed to be continued into a municipality other than the initiating municipality merely by reason of such drainage works or some part thereof being constructed on a road allowance forming the boundary line between two or more municipalities. R.S.O. 1990, c. D.17, s. 20 (2).

ASSESSMENTS

Engineer to distinguish assessments

21 The engineer in the report shall assess for benefit, outlet liability and injuring liability, and shall insert in an assessment schedule, in separate columns, the sums assessed for each opposite each parcel of land and road liable therefor. R.S.O. 1990, c. D.17, s. 21.

Assessment for benefit

22 Lands, roads, buildings, utilities or other structures that are increased in value or are more easily maintained as a result of the construction, improvement, maintenance or repair of a drainage works may be assessed for benefit. R.S.O. 1990, c. D.17, s. 22.

Assessment for liability

Outlet liability

23 (1) Lands and roads that use a drainage works as an outlet, or for which, when the drainage works is constructed or improved, an improved outlet is provided either directly or indirectly through the medium of any other drainage works or of a swale, ravine, creek or watercourse, may be assessed for outlet liability. R.S.O. 1990, c. D.17, s. 23 (1).

Injuring liability

(2) If, from any land or road, water is artificially caused by any means to flow upon and injure any other land or road, the land or road from which the water is caused to flow may be assessed for injuring liability with respect to a drainage works to relieve the injury so caused to such other land or road. R.S.O. 1990, c. D.17, s. 23 (2).

Basis of assessment

(3) The assessment for outlet liability and injuring liability provided for in subsections (1) and (2) shall be based upon the volume and rate of flow of the water artificially caused to flow upon the injured land or road or into the drainage works from the lands and roads liable for such assessments. R.S.O. 1990, c. D.17, s. 23 (3).

Certain owners not to count for or against petition

(4) The owners of the lands and roads made liable to assessment only under subsection (1) or (2) shall neither count for nor against the petition required by section 4 unless within the area therein described. R.S.O. 1990, c. D.17, s. 23 (4).

Assessment for special benefit

24 The engineer may assess for special benefit any lands for which special benefits have been provided by the drainage works. R.S.O. 1990, c. D.17, s. 24.

Engineer may assess a block, etc.

25 (1) The council of the local municipality may direct the engineer to assess as a block, a built-up area designated by the council, and the sum assessed therefor may be levied against all the rateable properties in the designated area proportionately on the basis of the assessed value of the land and buildings. R.S.O. 1990, c. D.17, s. 25 (1).

Assessment to be charged against public roads

(2) Where the engineer makes a block assessment under subsection (1), the engineer shall designate the proportion of the assessment to be charged against the public roads in the designated area. R.S.O. 1990, c. D.17, s. 25 (2).

Increased cost, how borne

26 In addition to all other sums lawfully assessed against the property of a public utility or road authority under this Act, and despite the fact that the public utility or road authority is not otherwise assessable under this Act, the public utility or road authority shall be assessed for and shall pay all the increase of cost of such drainage works caused by the existence of the works of the public utility or road authority. R.S.O. 1990, c. D.17, s. 26.

Assessment where drainage works continued beyond limits of municipality

27 Where a drainage works is continued into or through a municipality other than the initiating municipality under section 20, the engineer may assess, regardless of municipal boundaries, all lands and roads that, in the engineer's opinion, should be assessed for benefit, outlet liability or injuring liability, with such proportion of the cost of the drainage works as appears just, and in the report thereon the engineer shall estimate separately the cost of the drainage works within each municipality and upon the road allowances or other boundaries. R.S.O. 1990, c. D.17, s. 27.

Assessing lands in neighbouring municipality

28 Where any lands or roads in or under the jurisdiction of a local municipality, other than the local municipalities into or through which the drainage works passes, are, in the opinion of the engineer of the initiating or other municipality doing the work or part thereof, benefited by the drainage works or provided with an improved outlet or relieved from injuring liability, the engineer may assess the cost of the construction, improvement, maintenance or repair of the drainage works in the same manner as is provided in section 27. R.S.O. 1990, c. D.17, s. 28.

ALLOWANCES AND COMPENSATION

Allowances for right of way, etc.

29 The engineer in the report shall estimate and allow in money to the owner of any land that it is necessary to use,

- (a) for the construction or improvement of a drainage works;
- (b) for the disposal of material removed from drainage works;
- (c) as a site for a pumping station to be used in connection with a drainage works; or
- (d) as a means of access to any such pumping station, if, in the opinion of the engineer, such right of way is sufficient for the purposes of the drainage works,

the value of any such land or the damages, if any, thereto, and shall include such sums in the estimates of the cost of the construction, improvement, repair or maintenance of the drainage works. R.S.O. 1990, c. D.17, s. 29.

Amount for damage to ornamental trees, etc.

30 The engineer shall determine the amount to be paid to persons entitled thereto for damage, if any, to ornamental trees, lawns, fences, lands and crops occasioned by the disposal of material removed from a drainage works and shall include such sums in the estimates of the cost of the construction, improvement, repair or maintenance of the drainage works. R.S.O. 1990, c. D.17, s. 30.

Allowance for existing drains

31 Where an existing drain that was not constructed on requisition or petition under this Act or any predecessor of this Act is incorporated in whole or in part in a drainage works, the engineer in the report shall estimate and allow in money to the owner of such drain or part the value to the drainage works of such drain or part and shall include such sum in the estimates of the cost of the construction, improvement, repair or maintenance of the drainage works. R.S.O. 1990, c. D.17, s. 31.

Allowance for damage due to insufficient outlet

32 Where, in the opinion of the engineer, the cost of continuing a drainage works to a sufficient outlet or the cost of constructing or improving a drainage works with sufficient capacity to carry off the water will exceed the amount of injury likely to be caused to low-lying lands along the course of or below the termination of the drainage works, instead of continuing the works to such an outlet, or making it of such capacity, the engineer may include in the estimate of cost a sufficient sum to compensate the owners of such low-lying lands for any injuries they may sustain from the drainage works, and in the report the engineer shall determine the amount to be paid to the owners of such low-lying lands in respect of such injuries. R.S.O. 1990, c. D.17, s. 32.

Allowance for loss of access

33 Where the engineer thinks it expedient to make an allowance for loss of access to an owner instead of providing for the construction or the replacement, enlargement or other improvement of a bridge, the engineer shall in the report provide for payment to the owner of such amount as appears just by way of allowance for loss of access and shall include such sums in the estimates of the cost of the construction, improvement, repair or maintenance of the drainage works. R.S.O. 1990, c. D.17, s. 33.

Prior assessments to be taken into consideration

34 In fixing the sum to be assessed upon any land or road, the engineer may take into consideration any prior assessment or allowance on the same land or road for the construction, improvement, maintenance or repair of a drainage works and make such adjustment therefor as appears just, and in the report the engineer shall state the adjustment so made. R.S.O. 1990, c. D.17, s. 34.

Assessment may be shown in money

35 The assessment upon any land or road for a drainage works shall be shown by the engineer placing in a schedule to the report sums of money opposite the land or road, and, where the engineer considers it advisable, the fractional part of the whole cost to be borne by the land or road. R.S.O. 1990, c. D.17, s. 35.

Assessment of affected land

36 The engineer, in assessing the lands and roads requiring drainage or otherwise liable for assessment under this Act, shall show in the report the approximate number of hectares affected by the drainage works in each parcel of land assessed for the drainage works. R.S.O. 1990, c. D.17, s. 36.

Engineer to assess separately

37 The engineer in the report shall list separately the lands in each municipality that are assessed for a drainage works and shall indicate the assessment for the cost of lateral drains and the assessments of lands that are not agricultural lands. R.S.O. 1990, c. D.17, s. 37.

Variation in assessments for maintenance and repair

38 Where the engineer considers it equitable that the cost of the maintenance and repair of a drainage works be assessed upon a basis different from that upon which the cost of its construction or improvement is assessed, the engineer shall determine and report the basis upon which the cost of maintenance and repair of the drainage works or of any part or parts thereof shall be assessed. R.S.O. 1990, c. D.17, s. 38.

Time for filing report

39 (1) The engineer shall file the report with the clerk of the initiating municipality as soon as it is completed or, in any event, within one year after the appointment of the engineer or within such further time as may be extended before or after the expiry of the one-year period by resolution of the council of the municipality. 2010, c. 16, Sched. 1, s. 2 (7).

Engineer may forfeit compensation

(2) Where, after thirty days notice by council, the engineer neglects to make a report within the time limited by or extended under this section, the engineer shall forfeit all claims for compensation for the work done upon the drainage works, and the council of the local municipality may appoint another engineer. R.S.O. 1990, c. D.17, s. 39 (2).

By-law not invalid by reason report not filed

(3) A by-law passed by the council of any local municipality for the construction of a drainage works under this Act shall not be quashed by reason only that the report of the engineer was not filed within the time limited by or extended under this section. R.S.O. 1990, c. D.17, s. 39 (3).

Section Amendments with date in force (d/m/y)

2010, c. 16, Sched. 1, s. 2 (7) - 25/10/2010

Engineer's finding, drainage works not required, etc.

40 Where the engineer finds that a drainage works is not required or is impractical, or cannot be constructed under this Act, the engineer shall forthwith file with the clerk of the initiating municipality a report to that effect, stating the reasons therefor, the amount of the engineer's fees and other charges and by whom they shall be paid, and the clerk shall forthwith send a notice of the filing of such report to all persons who signed the petition and the matter shall not be further proceeded with unless the decision of the engineer is reversed on appeal. R.S.O. 1990, c. D.17, s. 40; 2010, c. 16, Sched. 1, s. 2 (8).

Section Amendments with date in force (d/m/y)

2010, c. 16, Sched. 1, s. 2 (8) - 25/10/2010

Notice of drainage works

41 (1) Upon the filing of the engineer's report, the council of the initiating municipality, if it intends to proceed with the drainage works, shall, within 30 days after the filing of the report, cause the clerk of the initiating municipality to send the prescribed persons a copy of the report and a notice stating,

- (a) the date on which the report was filed;
- (b) the name or other designation of the drainage works; and
- (c) the date of the council meeting at which the report will be considered. 2020, c. 18, Sched. 4, s. 6.

Clerk to notify persons assessed

(2) The clerk of every other local municipality in which any land or road that is assessed for the drainage works or for which compensation or other allowances have been provided in the report is situate shall send within thirty days of the sending of the last notice under subsection (1) a copy of the report and notice to the owners, as shown by the last revised assessment roll to be the owners of the lands and roads in such municipality assessed for the drainage works, or for which compensation or other allowance has been provided in the report stating,

- (a) the date of the filing of the report;
- (b) the name or other designation of the drainage works; and
- (c) the date of the council meeting of the initiating municipality at which the report will be considered. R.S.O. 1990, c. D.17, s. 41 (2); 2010, c. 16, Sched. 1, s. 2 (10).

Copy of report not required

(3) Despite subsections (1) and (2), where a block assessment is made, the notice to the owners of the lands so assessed need not be accompanied by a copy of the report. R.S.O. 1990, c. D.17, s. 41 (3).

Same

(3.1) Despite subsections (1) and (2), the council of a local municipality is not required to send a copy of the report to owners of lands and roads assessed for a sum of less than \$100. 1998, c. 18, Sched. A, s. 1 (1).

Council meeting for consideration of report

(4) The date of the council meeting at which the report will be considered shall not be less than ten days after the last notice has been sent under subsections (1) and (2). R.S.O. 1990, c. D.17, s. 41 (4); 2010, c. 16, Sched. 1, s. 2 (11).

By-law not to be quashed

(5) A by-law passed by the council of any local municipality in connection with the construction of a drainage works under this Act shall not be quashed by reason only that any notices required under this section were not sent within the specified time limits. R.S.O. 1990, c. D.17, s. 41 (5).

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. A, s. 1 (1) - 18/12/1998

2010, c. 16, Sched. 1, s. 2 (9-11) - 25/10/2010

2020, c. 18, Sched. 4, s. 6 - 30/06/2021

Consideration of report

42 The council of the initiating municipality at the meeting mentioned in section 41 shall consider the report, and, where the drainage works is requested on petition, shall give an opportunity to any person who has signed the petition to withdraw from it by filing a signed withdrawal with the clerk and shall also give those present owning lands within the area requiring drainage who have not signed the petition an opportunity to do so, and should any of the lands or roads owned by the municipality within the area requiring drainage as described in the petition be assessed, the council may by resolution authorize the head of the municipality to sign the petition for the municipality, and such signature counts as that of one person in favour of the petition. R.S.O. 1990, c. D.17, s. 42; 2010, c. 16, Sched. 1, s. 2 (12).

Section Amendments with date in force (d/m/y)

2010, c. 16, Sched. 1, s. 2 (12) - 25/10/2010

Liability of original petitioners

43 If, after striking out the names of the persons withdrawing, the names remaining on the petition, including the names, if any, added as provided by section 42 do not comply with section 4, the original petitioners on their respective assessments in the report are chargeable proportionately with and liable to the municipality for the expenses incurred by the municipality in connection with the petition and report and the sum with which each of such petitioners is chargeable shall be entered upon the collector's roll for the municipality against the lands of the person liable, and shall be collected in the same manner as real property taxes. R.S.O. 1990, c. D.17, s. 43.

Sufficiency of petition

44 If, at the end of such council meeting, the petition contains a sufficient number of names to comply with section 4, the council may proceed to adopt the report, and, subject to section 59, no person having signed the petition shall, after the adoption of the report, be permitted to withdraw. R.S.O. 1990, c. D.17, s. 44.

Adoption of report

45 (1) If a by-law in the form prescribed by the regulations, with the engineer's report attached to it, is given two readings by council, the report shall be considered to be adopted and the by-law shall be known as a provisional by-law. 2010, c. 16, Sched. 1, s. 2 (13).

Appeal or referral to Tribunal

(2) Where a report is not adopted by council, any petitioner may appeal to the Tribunal or, where lands used for agricultural purposes are included in the area to be drained, the Minister may refer the matter to the Tribunal. R.S.O. 1990, c. D.17, s. 45 (2); 2006, c. 19, Sched. A, s. 6 (1).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. A, s. 6 (1) - 22/06/2006

2010, c. 16, Sched. 1, s. 2 (13) - 25/10/2010

Notice of court of revision to be sent to local municipalities and to owners

46 (1) The council of the initiating municipality shall, within five days after the adoption of the report, send a copy of the provisional by-law, exclusive of the engineer's report, and a notice of the time and place of the first sitting of the court of revision to every other local municipality in which any land or road is assessed for the drainage works or for which allowance or compensation has been provided for in the report. R.S.O. 1990, c. D.17, s. 46 (1); 2010, c. 16, Sched. 1, s. 2 (14).

Idem

(2) The council of the initiating municipality and of every local municipality to whom a copy of the provisional by-law is sent under subsection (1) shall, within thirty days after the adoption of the report, send a copy of the provisional by-law, exclusive of the engineer's report, and a notice of the time and place of the sitting of the court of revision to each person or body entitled to notice under section 41 and the notice shall inform each owner that the owner may appeal the owner's assessment to the court of revision by a notice given to the clerk of the initiating municipality not later than ten days prior to the first sitting of the court of revision. R.S.O. 1990, c. D.17, s. 46 (2); 2010, c. 16, Sched. 1, s. 2 (15).

Sittings of court

(3) The first sitting of the court of revision shall be held on a day not earlier than twenty nor later than thirty days from the date of completing the sending of the copies of the provisional by-law under subsection (2). R.S.O. 1990, c. D.17, s. 46 (3); 2010, c. 16, Sched. 1, s. 2 (16).

Section Amendments with date in force (d/m/y)

2010, c. 16, Sched. 1, s. 2 (14-16) - 25/10/2010

APPEALS

Appeal from report to referee

47 (1) Any owner of land or public utility affected by a drainage works, if dissatisfied with the report of the engineer on the grounds that it does not comply with the requirements of this Act, or that the engineer has reported that the drainage works cannot be constructed under section 4, may appeal to the referee and in every case a notice of appeal shall be served upon the council of the initiating municipality within 40 days after the sending of the notices under section 40 or subsection 46 (2), as the case may be. R.S.O. 1990, c. D.17, s. 47 (1); 2010, c. 16, Sched. 1, s. 2 (17).

Notice to court clerk

(2) Upon receipt of a notice of appeal under subsection (1), the clerk of the municipality shall forthwith record the notice and send a copy of the notice to the clerk of the court of the referee. R.S.O. 1990, c. D.17, s. 47 (2).

Section Amendments with date in force (d/m/y)

2010, c. 16, Sched. 1, s. 2 (17) - 25/10/2010

Appeal to Tribunal

48 (1) Any owner of land or any public utility affected by a drainage works, if dissatisfied with the report of the engineer on the grounds that,

- (a) the benefits to be derived from the drainage works are not commensurate with the estimated cost thereof;
- (b) the drainage works should be modified on grounds to be stated;
- (c) the compensation or allowances provided by the engineer are inadequate or excessive;
- (d) the engineer has reported that the drainage works is not required, or is impractical, or cannot be constructed,

may appeal to the Tribunal, and in every case a notice of appeal shall be served within 40 days after the sending of the notices under section 40 or subsection 46 (2), as the case may be. R.S.O. 1990, c. D.17, s. 48 (1); 2006, c. 19, Sched. A, s. 6 (1); 2010, c. 16, Sched. 1, s. 2 (18).

Appeal by Director

(2) Where lands used for agricultural purposes may be affected by the drainage works, the Director may appeal to the Tribunal on any of the grounds and in the manner mentioned in subsection (1). R.S.O. 1990, c. D.17, s. 48 (2); 2006, c. 19, Sched. A, s. 6 (1).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. A, s. 6 (1) - 22/06/2006

2010, c. 16, Sched. 1, s. 2 (18) - 25/10/2010

Appeal by conservation authority

49 Where the proposed drainage works is to be undertaken within a watershed in which a conservation authority has jurisdiction, the authority may appeal from the report of the engineer to the Tribunal on the ground that the drainage works will injuriously affect a scheme undertaken by the authority under the *Conservation Authorities Act*, and in every case a notice of appeal shall be served within 40 days after the sending of the notices under subsection 46 (2). R.S.O. 1990, c. D.17, s. 49; 2006, c. 19, Sched. A, s. 6 (1); 2010, c. 16, Sched. 1, s. 2 (19).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. A, s. 6 (1) - 22/06/2006

2010, c. 16, Sched. 1, s. 2 (19) - 25/10/2010

Appeal by municipality

50 (1) The council of any local municipality to which a copy of a provisional by-law was sent under subsection 46 (1) may, within forty days after the copy of the provisional by-law was sent to the clerk, appeal to the Tribunal from the report by serving the clerk of the initiating municipality and the clerk of every other municipality assessed by the engineer with a notice of appeal setting forth the reasons for such appeal. R.S.O. 1990, c. D.17, s. 50 (1); 2006, c. 19, Sched. A, s. 6 (1); 2010, c. 16, Sched. 1, s. 2 (20).

Reasons for appeal

(2) The reasons for appeal may be the following, or any of them,

- (a) that the proposed drainage works as it affects the appealing municipality should be abandoned or modified, on grounds to be stated;
- (b) that the course of the drainage works or any part thereof should be altered;
- (c) that the drainage works does not provide a sufficient outlet;
- (d) that the drainage works should be carried to an outlet in the initiating municipality or elsewhere;
- (e) that a petition has been received by the council of the appealing municipality, as provided by section 4, for the enlargement by the appealing municipality of any part of a drainage works lying within its limits, and thence to an outlet, and that the council is of opinion that such enlargement is desirable to afford drainage facilities for the area described in the petition;
- (f) the work is unnecessary; or
- (g) that the assessment against lands and roads within the limits of the appealing municipality and roads under its jurisdiction is illegal, unjust or excessive. R.S.O. 1990, c. D.17, s. 50 (2).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. A, s. 6 (1) - 22/06/2006

2010, c. 16, Sched. 1, s. 2 (20) - 25/10/2010

Powers of Tribunal

51 (1) On any appeal or reference to the Tribunal under this Act, the Tribunal shall hear and determine the matter and, where not so provided, may make such order and direct such things to be done as are authorized by this Act or as it considers proper to carry out the purposes of this Act. R.S.O. 1990, c. D.17, s. 51 (1); 2006, c. 19, Sched. A, s. 6 (4).

Parties

(2) The parties to an appeal or reference to the Tribunal under this Act shall be the person making the appeal or reference and such other persons as the Tribunal may specify. R.S.O. 1990, c. D.17, s. 51 (2); 2006, c. 19, Sched. A, s. 6 (4).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. A, s. 6 (4) - 22/06/2006

Appeals

52 (1) An owner of land assessed for the drainage works may appeal to the court of revision on any of the following grounds:

1. Any land or road has been assessed an amount that is too high or too low.
2. Any land or road that should have been assessed has not been assessed.
3. Due consideration has not been given to the use being made of the land. 2010, c. 16, Sched. 1, s. 2 (21).

Notice of appeal

(2) To appeal, the owner shall send a notice to the clerk of the initiating municipality setting out the grounds of the appeal at least 10 days before the first sitting of the court. 2010, c. 16, Sched. 1, s. 2 (21).

Hearing of appeal

(3) If notice of appeal is sent in accordance with subsection (2), the court of revision shall hear the appeal. 2010, c. 16, Sched. 1, s. 2 (21).

Discretion of court of revision

(4) If notice of appeal is not sent in accordance with subsection (2), the court of revision may, by resolution passed at its first sitting, allow an appeal to be heard on such conditions as to giving notice to all persons interested or otherwise as the court considers just. 2010, c. 16, Sched. 1, s. 2 (21).

Section Amendments with date in force (d/m/y)

2006, c. 21, Sched. C, s. 107 - 01/05/2007

2010, c. 16, Sched. 1, s. 2 (21) - 25/10/2010

Adjournment of court or Tribunal

53 When the ground of appeal is that lands or roads are assessed too high and the evidence adduced satisfies the court of revision or Tribunal that the assessments on such lands or roads should be reduced and there is no evidence to indicate that the amount of such reduction should be levied against lands or roads whose owners are parties to appeals then pending before the court of revision or Tribunal, the court or Tribunal shall adjourn the hearing of the appeal for a time sufficient to enable the clerk to notify such persons as the appellant may specify who are shown by the last revised assessment roll to be owners of land affected of the date to which the hearing is adjourned, and the clerk shall so notify all such persons, and at such adjourned hearing the court or Tribunal shall dispose of the matter of appeal and, where appropriate, redistribute the assessments in such manner as appears just. R.S.O. 1990, c. D.17, s. 53; 2006, c. 19, Sched. A, s. 6 (5); 2010, c. 16, Sched. 1, s. 2 (22).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. A, s. 6 (5) - 22/06/2006

2010, c. 16, Sched. 1, s. 2 (22) - 25/10/2010

Appeal to Tribunal

54 (1) Any party to an appeal before the court of revision may appeal to the Tribunal by giving notice addressed to the clerk of the Tribunal, given to the clerk of the initiating municipality, from the decision of the court of revision or from its omission, neglect or refusal to hear or decide an appeal within twenty-one days of the pronouncement of the decision of the court of revision or of any matter evidencing such omission, neglect or refusal. R.S.O. 1990, c. D.17, s. 54 (1); 2006, c. 19, Sched. A, s. 6 (1).

Notice

(2) The clerk of the Tribunal shall give ten days notice to an appellant of the time and place of the hearing of the appeal by the Tribunal. R.S.O. 1990, c. D.17, s. 54 (2); 2006, c. 19, Sched. A, s. 6 (1).

Procedure

(3) Every appeal shall be heard by the Tribunal by way of a new hearing and shall be disposed of by the Tribunal in such manner as it considers proper, and its decision is final. R.S.O. 1990, c. D.17, s. 54 (3); 2006, c. 19, Sched. A, s. 6 (6).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. A, s. 6 (1, 6) - 22/06/2006

Evidence by engineer

55 In any appeal to the court of revision or to the Tribunal in which the engineer is called upon to give evidence as to how an assessment was determined, the engineer shall give evidence before the appellant's case is presented. R.S.O. 1990, c. D.17, s. 55; 2006, c. 19, Sched. A, s. 6 (1).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. A, s. 6 (1) - 22/06/2006

Clerk to alter assessments

56 Any change in an assessment made by the court of revision or by the Tribunal shall be given effect to by the clerk of the local municipality altering the assessments and other parts of the schedule to comply therewith and sending notice thereof to the owners affected, and the provisional by-law shall, before the passing thereof, be amended to carry out any changes so made by the court of revision or by the Tribunal. R.S.O. 1990, c. D.17, s. 56; 2006, c. 19, Sched. A, s. 6 (1).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. A, s. 6 (1) - 22/06/2006

Referral back to engineer

57 The council of the initiating municipality, at any time before passing the by-law, if it appears that there are or may be errors in the report of the engineer or that for any other reason the report should be reconsidered, may refer the report back to the engineer for reconsideration, and the engineer shall thereupon reconsider the report and shall further report to the council, which report has the same effect and shall be dealt with in the same manner and the proceedings thereon shall be the same as upon the original report. R.S.O. 1990, c. D.17, s. 57.

By-law may be passed

58 (1) Where the council of an initiating municipality has adopted a report for the construction of a drainage works after the time for appealing has expired and there are no appeals or after all appeals have been decided, the council may pass the provisional by-law to which the engineer's report was attached, thereby authorizing the construction of the drainage works, and work may be commenced ten days after the by-law is passed if no notice of intention to make application to quash the by-law has been filed with the clerk of the council. R.S.O. 1990, c. D.17, s. 58 (1); 2010, c. 16, Sched. 1, s. 2 (23).

Quashing of by-law

(2) If no notice of intention to make application to quash a by-law is filed with the clerk of the council within ten days after the passing of the by-law or, where a notice of intention has been given, if an application to quash is not made to the referee within three months after the passing of the by-law, the by-law, or so much thereof as is not the subject of or is not quashed upon any such application, is valid and binding according to its terms, so far as it prescribes or directs anything within the proper competence of the council. R.S.O. 1990, c. D.17, s. 58 (2).

Repeal of by-law

(3) A by-law may be repealed at any time before the work is commenced and before any assessment has been levied against the land assessed, and in such case the council of the initiating municipality shall pay all expenses in connection therewith out of the general funds of the municipality. R.S.O. 1990, c. D.17, s. 58 (3).

Where error in report

(4) If, at any time after the by-law is passed and before any assessments are levied, a gross error in the report is found, the council of the initiating municipality may on notice to all persons assessed apply to the Tribunal to correct the error. R.S.O. 1990, c. D.17, s. 58 (4); 2006, c. 19, Sched. A, s. 6 (1).

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection 58 (4) of the Act is repealed. (See: 2020, c. 18, Sched. 4, s. 7)

Appeal to Tribunal

(5) Where the council does not proceed with reasonable dispatch with the construction of the work after passage of the by-law, a petitioner may appeal to the Tribunal or, where lands used for agricultural purposes are included in the area to be

drained, the Minister may refer the matter to the Tribunal, and the Tribunal may direct the council to take such action as the council is authorized to take under this Act and as the Tribunal considers proper. R.S.O. 1990, c. D.17, s. 58 (5); 2006, c. 19, Sched. A, s. 6 (1); 2010, c. 16, Sched. 1, s. 2 (24).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. A, s. 6 (1) - 22/06/2006

2010, c. 16, Sched. 1, s. 2 (23, 24) - 25/10/2010

2020, c. 18, Sched. 4, s. 7 - not in force

Meeting to consider contract price

59 (1) Where the contract price exceeds 133 per cent of the engineer's estimate of the contract price, the council of the initiating municipality shall call a meeting in the manner prescribed by section 41, and sections 42 and 43 apply with necessary modifications. R.S.O. 1990, c. D.17, s. 59 (1).

Council may proceed with construction

(2) If at the close of the meeting the petition contains a sufficient number of names to comply with section 4, the council may proceed with the construction of the drainage works. R.S.O. 1990, c. D.17, s. 59 (2).

Municipalities required to raise cost

60 The council of each local municipality to which a copy of the report is required to be sent under subsection 41 (1) shall raise and pay over to the treasurer of the initiating municipality its proportion of the cost of the construction of the drainage works within sixty days after the drainage works has been certified complete by the engineer or a drainage superintendent. R.S.O. 1990, c. D.17, s. 60; 1998, c. 18, Sched. A, s. 1 (2).

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. A, s. 1 (2) - 18/12/1998

Imposition of special assessment

61 (1) The council of each local municipality that is required to raise the whole or any part of the cost of the drainage works shall by by-law impose upon the land assessed for the drainage works the assessment with which it is chargeable, and the amount so imposed is payable in such instalments as the council may prescribe. R.S.O. 1990, c. D.17, s. 61 (1).

Commutation of special assessment

(2) The council of any local municipality may provide that persons whose lands are assessed may commute for a payment in cash the assessments imposed thereon and may prescribe the terms and conditions thereof. R.S.O. 1990, c. D.17, s. 61 (2).

Assessments of \$50 or less

(3) Where the assessment against any parcel of land is \$50 or less, the council of the local municipality may provide that the assessment shall be paid out of the general funds of the municipality or that the assessment shall be paid in the first year in which the assessment is imposed upon the land assessed. R.S.O. 1990, c. D.17, s. 61 (3).

Priority lien

(4) The assessments and rates imposed under this Act shall have priority lien status as described in section 1 of the *Municipal Act, 2001* or section 3 of the *City of Toronto Act, 2006*, as the case may be. 2002, c. 17, Sched. F, Table; 2006, c. 32, Sched. C, s. 14.

Lands exempt from taxation to be assessed

(5) Land exempt from taxation under the *Assessment Act* is subject to this Act for all purposes, including being subject to assessment for the cost of a drainage works. 2010, c. 16, Sched. 1, s. 2 (25).

Responsibility for paying assessment

(6) An assessment under this Act that falls due while the land is exempt from taxation under the *Assessment Act* shall be paid,

- (a) by the owner of the land if the owner has signed the petition to undertake the drainage works;
- (b) by the owner of the land if the land is,
 - (i) land on which a church or other place of worship has been erected and which is used for that purpose,
 - (ii) land of a university, college or seminary of learning, whether vested in a trustee or otherwise,

(iii) land of a board of an elementary or secondary school, as defined in the *Education Act*, or

(iv) land owned by an upper-tier municipality; or

(c) by the municipality that imposed the assessment in all other cases. 2010, c. 16, Sched. 1, s. 2 (25).

Section Amendments with date in force (d/m/y)

2002, c. 17, Sched. F, Table - 01/01/2003

2006, c. 32, Sched. C, s. 14 - 01/01/2007

2010, c. 16, Sched. 1, s. 2 (25) - 25/10/2010

Amendment of by-law

62 (1) Any by-law for the assessment upon the lands and roads liable to contribute for any drainage works that has been acted upon by the completion of the drainage works in whole or in part shall, where more than sufficient funds or where insufficient funds have been provided for the completion of or proper contribution towards the drainage works or for the redemption of the debentures authorized to be issued thereunder as they become payable, be amended, and, if lands and roads in any other municipality are assessed for the drainage works, the surplus or deficiency of money shall be divided proportionately among the contributing municipalities, and every such surplus or deficiency shall be applied by the council of the municipality proportionately according to the assessment in payment of the rates imposed by it for the drainage works. R.S.O. 1990, c. D.17, s. 62 (1).

When lands and roads in another municipality assessable

(2) Where a by-law provides insufficient funds and lands and roads in another municipality are assessed for the drainage works, the council of the initiating municipality shall appoint an engineer to make an examination of the drainage works and report upon it with an estimate of the cost of completion for which sufficient funds have not been provided under the original by-law, and shall notify the heads of the other local municipalities as in the case of the original report, and the council of any municipality so notified has a right of appeal to the Tribunal in the manner provided by section 50 on the grounds of the improper expending or unlawful or other application of the drainage money already raised and is subject to the same duty, as to raising and paying over its share of the money to be raised, as in the case of the original by-law. R.S.O. 1990, c. D.17, s. 62 (2); 2006, c. 19, Sched. A, s. 6 (1).

Responsibility of owner for payment

(3) Where any allowance or compensation has been determined for an owner under sections 29 to 33, the council may, where the amount so determined is less than the total amount owing from that owner, deduct from that total the amount so determined and the owner shall be responsible for paying the balance in the manner prescribed by the by-law. R.S.O. 1990, c. D.17, s. 62 (3).

Payment of balance

(4) Where any allowance or compensation mentioned in subsection (3) exceeds the total amount owing by the owner, the municipality shall pay the balance to the owner. R.S.O. 1990, c. D.17, s. 62 (4).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. A, s. 6 (1) - 22/06/2006

CONSTRUCTION

Powers of contractor

63 (1) The contractor and the contractor's assistants when engaged in the construction, maintenance, improvement or repair of a drainage works may, with their equipment, enter upon whatever lands are necessary to complete the work within the working space designated in the engineer's report. R.S.O. 1990, c. D.17, s. 63 (1).

Penalty for obstruction

(2) Every person who wilfully interferes with or obstructs the contractor or any of the contractor's assistants in the exercise of the powers conferred by subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$1,000. R.S.O. 1990, c. D.17, s. 63 (2).

Appeal by owner of land

64 Any owner of land dissatisfied with the quality of the construction of a drainage works constructed under this Act may, at any time during construction or up to one year from the date of completion of the drainage works as certified by the engineer

or a drainage superintendent of the drainage works, appeal to the Tribunal on grounds to be stated. R.S.O. 1990, c. D.17, s. 64; 1998, c. 18, Sched. A, s. 1 (3); 2006, c. 19, Sched. A, s. 6 (1).

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. A, s. 1 (3) - 18/12/1998

2006, c. 19, Sched. A, s. 6 (1) - 22/06/2006

SPECIAL PROVISIONS

Changes in assessment

Subsequent subdivision of land

65 (1) If, after the final revision of an engineer's assessment of land for a drainage works, the land is divided by a change in ownership of any part, the clerk of the local municipality in which the land is situate shall instruct an engineer in writing to apportion the assessment among the parts into which the land was divided, taking into account the part of the land affected by the drainage works. 2010, c. 16, Sched. 1, s. 2 (26).

Agreement on share of assessment

(2) If the owners of the subdivided land mutually agree on the share of the drainage assessment that each should pay, they may enter into a written agreement and file it with the clerk of the local municipality and, if the agreement is approved by the council by resolution, no engineer need be instructed under subsection (1). 2010, c. 16, Sched. 1, s. 2 (26).

Subsequent connection to drainage works, etc.

(3) If an owner of land that is not assessed for a drainage works subsequently connects the land with the drainage works for the purpose of drainage, or if the nature or extent of the use of a drainage works by land assessed for the drainage works is subsequently altered, the clerk of the local municipality in which the land is situate shall instruct an engineer in writing to inspect the land and assess it for a just proportion of the drainage works, taking into account any compensation paid to the owner of the land in respect of the drainage works. 2010, c. 16, Sched. 1, s. 2 (26).

Subsequent disconnection from drainage works

(4) If an owner of land that is assessed for a drainage works subsequently disconnects the land from the drainage works, the clerk of the local municipality in which the land is situate shall instruct an engineer in writing to inspect the land and determine the amount by which the assessment of the land should change. 2010, c. 16, Sched. 1, s. 2 (26).

Restriction on connection or disconnection

(5) No person shall connect to or disconnect from drainage works without the approval of the council of the municipality. 2010, c. 16, Sched. 1, s. 2 (26).

Notice of instructions

(6) The clerk of the local municipality shall send a copy of the instructions mentioned in subsection (1), (3) or (4) to the owners of the affected lands as soon as reasonably possible. 2010, c. 16, Sched. 1, s. 2 (26).

Engineer's assessment

(7) An engineer who prepares an assessment pursuant to instructions received under subsection (1), (3) or (4) shall file the assessment with the clerk of the local municipality. 2010, c. 16, Sched. 1, s. 2 (26).

Notice of assessment

(8) The clerk of the local municipality shall attach the engineer's assessment to the original assessment and send a copy of both to the owners of the affected lands. 2010, c. 16, Sched. 1, s. 2 (26).

Assessment binding

(9) Subject to subsection (11), the engineer's assessment is binding on the assessed land. 2010, c. 16, Sched. 1, s. 2 (26).

Costs

(10) The costs of the assessment, including the fees of the engineer, shall be paid by the owners of the lands in the proportion fixed by the engineer or, on appeal, by the Tribunal, and subsection 61 (4) applies to these costs. 2010, c. 16, Sched. 1, s. 2 (26).

Appeal of assessment

(11) If the engineer's assessment is for an amount greater than \$500, the owner of the land may appeal to the Tribunal within 40 days after the date the clerk sends a copy of the assessment to the owner. 2010, c. 16, Sched. 1, s. 2 (26).

Use of amount collected

(12) Any amount collected under subsection (3) shall be credited to the account of the drainage works and shall be used only for the improvement, maintenance or repair of the whole or any part of the drainage works. 2010, c. 16, Sched. 1, s. 2 (26).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. A, s. 6 (1) - 22/06/2006

2010, c. 16, Sched. 1, s. 2 (26) - 25/10/2010

66 REPEALED: 2010, c. 16, Sched. 1, s. 2 (26).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. A, s. 6 (1) - 22/06/2006

2010, c. 16, Sched. 1, s. 2 (26) - 25/10/2010

Tenant's covenant to pay taxes, when to include drainage assessments

67 Any agreement on the part of a tenant to pay the rates or taxes in respect of the demised land does not include the charges and assessments for a drainage works unless the agreement in express terms so provides, but, in cases of contract to purchase or of leases giving the lessee an option to purchase, the charges and assessments for a drainage works, in connection with which proceedings were commenced under this Act after the date of the contract or lease and which have already been paid by the owner, shall in the absence of any agreement to the contrary, be added to the price and shall be paid by the purchaser or the lessee where the purchaser or lessee exercises an option to purchase, but the amount still unpaid on the cost of the drainage works and charged against the lands shall be borne by the purchaser unless otherwise provided by the conveyance or agreement. R.S.O. 1990, c. D.17, s. 67.

Registration of by-law

68 Where compensation has been paid to the owner of any land under section 32 or 33, the clerk of the local municipality shall cause to be registered in the proper land registry office a copy of the by-law adopting the report, exclusive of the plans, profiles and specifications of the drainage works, together with a statement of the amount paid and a description of the land in respect of which the amount was paid in the form prescribed in the regulations. R.S.O. 1990, c. D.17, s. 68.

Public utility or road authority, option to construct drainage works

69 (1) Where a drainage works or a part thereof is to be constructed, improved, maintained or repaired upon, along, adjoining, under or across the lands, permanent way, transmission lines, power lines, wires, conduits or other permanent property of a public utility or road authority, the public utility or road authority may construct, improve, maintain or repair such drainage works or part. R.S.O. 1990, c. D.17, s. 69 (1).

Non-exercise by public utility or road authority

(2) Where the public utility or road authority does not exercise its powers under subsection (1) or does not complete such drainage works or part within a reasonable time and without unnecessary delay, such drainage works or part may be completed by the initiating municipality in the same manner as any other drainage works. R.S.O. 1990, c. D.17, s. 69 (2).

Fees of engineer part of cost

70 The fees and expenditures of the engineer form part of the cost of the drainage works. R.S.O. 1990, c. D.17, s. 70.

Account of engineer

71 The account of the engineer shall be set out in such detail as the council of the local municipality that appointed the engineer may require. R.S.O. 1990, c. D.17, s. 71.

Review by Tribunal

72 (1) The council of the local municipality, within forty days after the engineer's account is presented to the clerk of the municipality, may, on notice to the engineer, apply to the Tribunal, which shall review the account and make any alteration it considers just. R.S.O. 1990, c. D.17, s. 72 (1); 2006, c. 19, Sched. A, s. 6 (7).

Appeal to referee

(2) Where the account as confirmed or altered by the Tribunal exceeds \$1,000, either party may, on notice to the other party, appeal the decision of the Tribunal to the referee, whose decision is final. R.S.O. 1990, c. D.17, s. 72 (2); 2006, c. 19, Sched. A, s. 6 (1).

Non-requirement of notice

(3) In any application made under subsection (1), it shall not be necessary to notify all persons assessed for the drainage works. R.S.O. 1990, c. D.17, s. 72 (3).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. A, s. 6 (1, 7) - 22/06/2006

Costs to be deemed part of cost of drainage works

73 (1) Except where otherwise provided in this Act or by a decision on an appeal, the cost of any application, reference or appeal and the cost of temporary financing for the construction, improvement, repair and maintenance of a drainage works, shall form part of the cost of the drainage works. R.S.O. 1990, c. D.17, s. 73 (1).

Cost of council meetings

(2) The cost of council meetings and special council meetings shall not be included in the cost of the drainage works. R.S.O. 1990, c. D.17, s. 73 (2).

Fees of clerk

(3) The council of a local municipality may by by-law provide for payment to the clerk of the municipality of reasonable fees or other remuneration for services performed by the clerk in carrying out the provisions of this Act, but such fees or other remuneration shall not be deemed to form part of the cost of the drainage works. R.S.O. 1990, c. D.17, s. 73 (3).

MAINTENANCE, REPAIR AND IMPROVEMENT

Maintenance of drainage works and cost

74 Any drainage works constructed under a by-law passed under this Act or any predecessor of this Act, relating to the construction or improvement of a drainage works by local assessment, shall be maintained and repaired by each local municipality through which it passes, to the extent that such drainage works lies within the limits of such municipality, at the expense of all the upstream lands and roads in any way assessed for the construction or improvement of the drainage works and in the proportion determined by the then current by-law pertaining thereto until, in the case of each municipality, such provision for maintenance or repair is varied or otherwise determined by an engineer in a report or on appeal therefrom. R.S.O. 1990, c. D.17, s. 74.

Service of copy of by-law on municipality liable for contribution and appeal from by-law

75 (1) The council of any local municipality undertaking the repair of a drainage works without the report of an engineer, shall, before commencing the repairs,

- (a) give two readings to a by-law for undertaking such repairs, which by-law shall recite the description, extent and estimated cost of the repairs to be done and the amount to be contributed therefor by each local municipality affected by the drainage works and shall be known as a provisional by-law; and
- (b) serve upon the head or clerk of any municipality liable to contribute any portion of the cost of such repairs a copy of the provisional by-law,

and the council of any municipality so served may, within forty days thereafter, appeal from such by-law to the Tribunal on the ground that work provided for in the by-law is unnecessary or that such drainage works has never been completed through the default or neglect of the municipality whose duty it was to do the work. R.S.O. 1990, c. D.17, s. 75 (1); 2006, c. 19, Sched. A, s. 6 (8).

Council to furnish amount required

(2) The council of every municipality served with a copy of the provisional by-law shall, forthwith after the time for appealing from such by-law has expired and there are no appeals or after all appeals have been decided, pass a by-law to raise the amount assessed against lands and roads in the municipality, as stated in the provisional by-law or as determined on appeal therefrom, and shall pay over such amount within a reasonable time to the treasurer of the initiating municipality. R.S.O. 1990, c. D.17, s. 75 (2).

When levy for maintenance required

(3) The council of any municipality shall not be required to assess and levy the amount charged for maintenance or repair of a drainage works more than once in every five years if the total expense incurred does not exceed the sum of \$5,000, in which case section 474.10.13 of the *Municipal Act, 2001* does not apply. R.S.O. 1990, c. D.17, s. 75 (3); 2017, c. 23, Sched. 5, s. 27; 2021, c. 4, Sched. 6, s. 42.

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. A, s. 6 (8) - 22/06/2006

2017, c. 23, Sched. 5, s. 27 - 03/04/2018

2021, c. 4, Sched. 6, s. 42 - 01/06/2020

Varying original assessments for maintenance

76 (1) The council of any local municipality liable for contribution to a drainage works in connection with which conditions have changed or circumstances have arisen such as to justify a variation of the assessment for maintenance and repair of the drainage works may make an application to the Tribunal, of which notice has been given to the head of every other municipality affected by the drainage works, for permission to procure a report of an engineer to vary the assessment, and, in the event of such permission being given, such council may appoint an engineer for such purpose and may adopt the report but, if all the lands and roads assessed or intended to be assessed lie within the limits of one local municipality, the council of that municipality may procure and adopt such report without such permission. R.S.O. 1990, c. D.17, s. 76 (1); 2006, c. 19, Sched. A, s. 6 (1).

Proceedings on report of engineer

(2) The proceedings upon such report, excepting appeals, shall be the same, as nearly as may be, as upon the report for the construction of the drainage works. R.S.O. 1990, c. D.17, s. 76 (2).

Appeal from report of engineer

(3) Any council served with a copy of such report may, within forty days of such service, appeal to the Tribunal from the finding of the engineer as to the portion of the cost of the drainage works for which the municipality is liable. R.S.O. 1990, c. D.17, s. 76 (3); 2006, c. 19, Sched. A, s. 6 (1).

Appeal from assessment

(4) Any owner of land assessed for maintenance or repair may appeal from the assessment in the report on the grounds and in the manner provided by section 52 in the case of the construction of the drainage works. R.S.O. 1990, c. D.17, s. 76 (4).

Basis of future assessments

(5) An assessment determined under this section shall thereafter, until it is further varied, form the basis of any assessment for maintenance or repair of the drainage works affected thereby. R.S.O. 1990, c. D.17, s. 76 (5).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. A, s. 6 (1) - 22/06/2006

77 REPEALED: 2020, c. 18, Sched. 4, s. 8.

Section Amendments with date in force (d/m/y)

2020, c. 18, Sched. 4, s. 8 - 30/06/2021

Improving, upon examination and report of engineer

78 (1) If a drainage works has been constructed under a by-law passed under this Act or any predecessor of this Act, and the council of the municipality that is responsible for maintaining and repairing the drainage works considers it appropriate to undertake one or more of the major improvement projects listed in subsection (1.1) for the better use, maintenance or repair of the drainage works or of lands or roads, the municipality may undertake and complete the project in accordance with the report of an engineer appointed by it and without the petition required by section 4. 2010, c. 16, Sched. 1, s. 2 (27); 2020, c. 18, Sched. 4, s. 9 (1).

Projects

(1.1) The major improvement projects referred to in subsection (1) are:

1. Changing the course of the drainage works.
2. Making a new outlet for the whole or any part of the drainage works.
3. Constructing a tile drain under the bed of the whole or any part of the drainage works.
4. Constructing, reconstructing or extending embankments, walls, dykes, dams, reservoirs, bridges, pumping stations or other protective works in connection with the drainage works.
5. Extending the drainage works to an outlet.

5.1 Improving or altering the drainage works if the drainage works is located on more than one property.

6. Covering all or part of the drainage works.
7. Consolidating two or more drainage works.
8. Any other activity to improve the drainage works, other than an activity prescribed by the Minister as a minor improvement. 2010, c. 16, Sched. 1, s. 2 (27); 2020, c. 18, Sched. 4, s. 9 (2-4).

Notice

(2) An engineer shall not be appointed under subsection (1) until 30 days after a notice has been sent to the following persons advising them of the municipality's intent to undertake the major improvement project:

1. The secretary-treasurer of each conservation authority that has jurisdiction over any lands that would be affected by the project.
2. The prescribed persons. 2020, c. 18, Sched. 4, s. 9 (5).

Powers and duties of engineer

(3) The engineer has all the powers and shall perform all the duties of an engineer appointed with respect to the construction of a drainage works under this Act. R.S.O. 1990, c. D.17, s. 78 (3).

Proceedings

(4) All proceedings, including appeals, under this section shall be the same as on a report for the construction of a drainage works. R.S.O. 1990, c. D.17, s. 78 (4).

Minor improvements to drainage works

(5) Despite subsections (2) to (4), the Minister may prescribe the process for approving minor improvements to a drainage works mentioned in paragraph 8 of subsection (1.1). 2020, c. 18, Sched. 4, s. 9 (6).

Section Amendments with date in force (d/m/y)

2010, c. 16, Sched. 1, s. 2 (27, 28) - 25/10/2010

2020, c. 18, Sched. 4, s. 9 (1-6) - 30/06/2021

Power to compel repairs

79 (1) Upon forty-five days notice served by any person affected by the condition of a drainage works, upon the head or clerk of the local municipality whose duty it is to maintain and repair the drainage works, the municipality is compellable by an order of the referee to exercise the powers and to perform the duties conferred or imposed upon it by this Act as to maintenance and repair or such of the powers and duties as to the referee appears proper, and the municipality is liable in damages to the owner whose property is so injuriously affected. R.S.O. 1990, c. D.17, s. 79 (1); 2010, c. 16, Sched. 1, s. 2 (29).

Municipality liable for damages caused by non-repair

(2) Despite subsection (1), the local municipality whose duty it is to maintain and repair drainage works shall not become liable in damages to any person affected by reason of the non-repair of the drainage works until after service by or on behalf of such person of the notice referred to in subsection (1) upon the head or clerk of the municipality, describing with reasonable certainty the alleged lack of maintenance and repair of the drainage works. R.S.O. 1990, c. D.17, s. 79 (2).

No liability where drainage works blocked by ice or snow

(3) The local municipality whose duty it is to maintain and repair a drainage works is not liable in damages for any injury caused by reason of a drainage works being blocked by snow or ice and overflowing the lands of any person without negligence on the part of the municipal corporation. R.S.O. 1990, c. D.17, s. 79 (3).

Section Amendments with date in force (d/m/y)

2010, c. 16, Sched. 1, s. 2 (29) - 25/10/2010

Person responsible for obstruction to remove it on notice

80 (1) When a drainage works becomes obstructed by a dam, low bridge, fence, washing out of a private drain, or other obstruction, for which the owner or occupant of the land adjoining the drainage works is responsible, so that the free flow of the water is impeded thereby, the persons owning or occupying the land shall, upon reasonable notice sent by the council of the local municipality whose duty it is to maintain and repair the drainage works or by a drainage superintendent appointed by the council, remove such obstruction and, if it is not so removed within the time specified in the notice, the council or the

drainage superintendent shall forthwith cause it to be removed, and the cost thereof is payable to the municipality by the owner or occupant of the land. R.S.O. 1990, c. D.17, s. 80 (1); 1998, c. 18, Sched. A, s. 1 (4); 2010, c. 16, Sched. 1, s. 2 (30).

Collection of cost of removal

(2) If the cost of removing the obstruction is not paid to the local municipality by the owner or occupant of the land forthwith after the completion of the work, the council may pay the cost, and the clerk of the municipality shall place the amount of cost upon the collector's roll against such land and such amount shall be collected in the same manner as real property taxes. R.S.O. 1990, c. D.17, s. 80 (2).

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. A, s. 1 (4) - 18/12/1998

2010, c. 16, Sched. 1, s. 2 (30) - 25/10/2010

Removal of minor obstructions

81 The council by by-law or resolution shall direct a drainage superintendent to remove from any drainage works all weeds and brushwood, fallen timber or other minor obstructions for which the owner or occupant of the lands adjacent to the drainage works may not be responsible, and the cost of such work is chargeable as part of the cost of maintenance of the drainage works. R.S.O. 1990, c. D.17, s. 81; 1998, c. 18, Sched. A, s. 1 (5).

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. A, s. 1 (5) - 18/12/1998

Municipality may sue for cost of damage to drainage works

82 (1) A municipality in which a drainage works or part thereof is situate may bring an action for damages against any person who destroys or injures in any way a drainage works, including any bench mark or permanent level, and any damages ordered by the referee to be paid shall be paid to the municipality and used for the construction, improvement, maintenance or repair of the drainage works. R.S.O. 1990, c. D.17, s. 82 (1).

Penalty for damage to drainage works

(2) Every person who obstructs, fills up or injures or destroys by any means a drainage works is guilty of an offence and on conviction, in addition to liability in damages, is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than thirty days, or to both. R.S.O. 1990, c. D.17, s. 82 (2).

83 REPEALED: 2010, c. 16, Sched. 1, s. 2 (31).

Section Amendments with date in force (d/m/y)

2010, c. 16, Sched. 1, s. 2 (31) - 25/10/2010

Abandonment of all or part of drainage works

84 (1) If three-quarters of the owners of land assessed for benefit in respect of a drainage works, who, according to the last revised assessment roll, own not less than three-quarters of the area assessed for benefit as shown in the by-law or by-laws under which the drainage works exist, send a request asking for the abandonment of the whole or any part of the drainage works, the council of the initiating municipality shall, as soon as reasonably possible, send a notice to all of the owners of the land assessed for the drainage works stating its intention to abandon the drainage works or the part of the drainage works specified in the notice, unless, within 10 days of the date the municipality's notice was sent, any owner sends a notice to the clerk of the municipality requesting that the report of an engineer be made on the proposed abandonment. 2010, c. 16, Sched. 1, s. 2 (32).

Same

(2) The council of the initiating municipality may send a notice in accordance with subsection (1) of its intention to abandon a drainage works or the part of the drainage works specified in the notice, even if a request described in subsection (1) has not been sent to the municipality. 2010, c. 16, Sched. 1, s. 2 (32).

Engineer's report may be required

(3) If an owner sends a notice to the clerk within the 10-day period in accordance with subsection (1), the council shall appoint an engineer to examine the drainage works and report recommendations as to the proposed abandonment, any necessary work in connection therewith, the sale of any assets, the cost of abandonment and all other appropriate matters and shall assess all costs, including the engineer's compensation, and damage allowances against persons liable to assessment in connection with the drainage works in such proportions as appear just. R.S.O. 1990, c. D.17, s. 84 (3); 2010, c. 16, Sched. 1, s. 2 (33).

Procedures on report

(4) All proceedings, including appeals, with respect to a report under subsection (1) shall be the same with necessary modifications as on a report for the construction of a drainage works. R.S.O. 1990, c. D.17, s. 84 (4).

Abandonment by council

(5) If no owner sends a notice to the clerk within the 10-day period in accordance with subsection (1) or if the engineer's report, as it may be altered on appeal, recommends the abandonment of the drainage works, the council may by by-law abandon the drainage works, and thereafter the municipality has no further obligation with respect to the drainage works. R.S.O. 1990, c. D.17, s. 84 (5); 2010, c. 16, Sched. 1, s. 2 (34).

Disbursement of remaining funds

(6) Any money remaining to the credit of the drainage works after it is abandoned shall be divided proportionately among the owners of lands and roads assessed therefor. R.S.O. 1990, c. D.17, s. 84 (6).

Section Amendments with date in force (d/m/y)

2010, c. 16, Sched. 1, s. 2 (32-34) - 25/10/2010

AMENDMENTS TO ENGINEER'S REPORT

Amendments to engineer's report

84.1 (1) This section applies with respect to engineer's reports that are prepared for the purpose of a petition under section 4 or for the purpose of section 78 and that are adopted by a municipal by-law. 2020, c. 18, Sched. 4, s. 10.

Approval process

(2) The Minister may, by regulation, set out the process by which the engineer's report may be amended and the process by which those amendments are to be approved. 2020, c. 18, Sched. 4, s. 10.

Section Amendments with date in force (d/m/y)

2020, c. 18, Sched. 4, s. 10 - 30/06/2021

GRANTS

Provincial grants

85 Grants may be made in respect of,

- (a) assessments made under this Act upon lands used for agricultural purposes,
 - (i) for drainage works undertaken in accordance with section 4, 74 or 78 where a report of an engineer describing the current work has been adopted in accordance with this Act, and
 - (ii) for maintenance, repair and minor improvements undertaken on the recommendation of a drainage superintendent within the budgeting limitations established by the Minister for that municipality;
- (b) costs incurred by the municipality in the employment of drainage superintendents; and
- (c) the total cost of preparing a preliminary report exclusive of the cost of preparing any benefit cost statement and any environmental appraisal. R.S.O. 1990, c. D.17, s. 85; 1998, c. 18, Sched. A, s. 1 (6, 7).

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. A, s. 1 (6, 7) - 18/12/1998

When grants not to be made

86 (1) Subject to subsection (2), grants shall not be made in respect of assessments made under this Act upon lands owned by Canada, Ontario or a municipality or in respect of the assessment of the cost of lateral drains. R.S.O. 1990, c. D.17, s. 86 (1).

Exception

(2) Grants may be made in respect of lands owned by Ontario and leased for agricultural purposes to a lessee with an option to purchase. R.S.O. 1990, c. D.17, s. 86 (2).

Payment of grant

87 (1) The Minister, upon receipt of a completed application form, may pay to the treasurer of an initiating municipality a grant of,

- (a) 33 $\frac{1}{3}$ per cent of the assessments eligible for a grant under section 85, if the drainage works is in a local municipality that is not within a territorial district; or
- (b) 66 $\frac{2}{3}$ per cent of the assessments eligible for a grant under section 85, if the drainage works is in a local municipality within a territorial district. 2002, c. 17, Sched. F, Table.

Grants in unorganized territory

(2) Where a drainage works is in territory without municipal organization, an amount not exceeding 80 per cent of the assessments eligible for a grant under section 85 in respect of such drainage works may be paid by the Minister out of the money appropriated therefor by the Legislature. R.S.O. 1990, c. D.17, s. 87 (2).

Where drainage superintendents employed

(3) Where one or more municipalities employ drainage superintendents who have qualifications satisfactory to the Minister, the Minister may direct that 50 per cent of the costs incurred by the municipality or municipalities in the employment of the superintendents shall be paid out of the money appropriated for that purpose by the Legislature. 1998, c. 18, Sched. A, s. 1 (8).

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. A, s. 1 (8) - 18/12/1998

2002, c. 17, Sched. F, Table - 01/01/2003

Application for grant

88 (1) Upon the practical completion of the drainage works and after the time for appealing against assessments has expired and there are no appeals or after all appeals against assessments have been decided, the council of the initiating municipality shall forward to the Director an application for a grant in such form as is provided by the Director. R.S.O. 1990, c. D.17, s. 88 (1).

Grant re interest charges

(2) No grant shall be paid in respect of interest charges on any drainage works accruing after 120 days from the completion thereof as certified by the engineer or a drainage superintendent. R.S.O. 1990, c. D.17, s. 88 (2); 1998, c. 18, Sched. A, s. 1 (9).

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. A, s. 1 (9) - 18/12/1998

Distribution

89 (1) Where the drainage works is in two or more municipalities, the grant shall be distributed by the treasurer of the initiating municipality among all such municipalities in the proportion that the total of the assessments eligible for a grant in each municipality bears to the total of all assessments eligible for a grant in all of the municipalities. R.S.O. 1990, c. D.17, s. 89 (1).

Grant to be applied to reduce assessments

(2) The treasurer of each municipality shall apply the amount of the grant received by that municipality to reduce the assessment on each parcel of land in the municipality eligible for a grant in the proportion that each such assessment bears to the total of the assessments eligible for a grant in the municipality. R.S.O. 1990, c. D.17, s. 89 (2).

Reduction of grant

90 The Minister may reduce or withhold a grant on any drainage works if in his or her opinion the costs other than the contract price are excessive. R.S.O. 1990, c. D.17, s. 90.

DIRECTOR

Director

91 The Minister may appoint a Director for the purposes of this Act. R.S.O. 1990, c. D.17, s. 91.

Persons to advise and assist

92 The Minister may designate such persons as he or she considers necessary to advise and assist municipalities and engineers in the application and administration of this Act and any such person who is not a public servant employed under Part III of the *Public Service of Ontario Act, 2006* shall be paid such remuneration as the Lieutenant Governor in Council may determine, together with reasonable expenses. R.S.O. 1990, c. D.17, s. 92; 2006, c. 35, Sched. C, s. 27.

Section Amendments with date in force (d/m/y)

2006, c. 35, Sched. C, s. 27 - 20/08/2007

DRAINAGE SUPERINTENDENT AND COMMISSIONERS

Appointment of drainage superintendents

93 (1) The council of a local municipality may by by-law appoint a drainage superintendent or, with the approval of the Minister, more than one drainage superintendent. 2010, c. 16, Sched. 1, s. 2 (35).

Drainage superintendent may act for more than one municipality

(2) Two or more municipalities may appoint the same person to be a drainage superintendent within each municipality. 2010, c. 16, Sched. 1, s. 2 (35).

Duties of drainage superintendent

(3) A drainage superintendent for a municipality shall,

- (a) inspect every drainage works for which the municipality is responsible and report periodically to council on the condition of those drainage works;
- (b) initiate and supervise the maintenance and repair of the drainage works for which the municipality is responsible;
- (c) assist in the construction or improvement of the drainage works for which the municipality is responsible; and
- (d) report to council on the superintendent's activities mentioned in clauses (b) and (c). 2010, c. 16, Sched. 1, s. 2 (35).

Remuneration

(4) The council may provide for fees or other remuneration for services performed by drainage superintendents in carrying out their duties under this Act, but the fees or other remuneration shall not be deemed to form part of the cost of the drainage works and shall be paid from the general funds of the municipality. 2010, c. 16, Sched. 1, s. 2 (35).

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. A, s. 1 (10, 11) - 18/12/1998

2010, c. 16, Sched. 1, s. 2 (35) - 25/10/2010

94 REPEALED: 2010, c. 16, Sched. 1, s. 2 (35).

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. A, s. 1 (12, 13) - 18/12/1998

2010, c. 16, Sched. 1, s. 2 (35) - 25/10/2010

Appointment of commissioner

95 (1) For the better maintenance and repair of drainage works by embanking, pumping or other mechanical operations, the council of the municipality initiating the drainage works may by by-law,

- (a) appoint one or more commissioners with power to,
 - (i) enter into all necessary and proper contracts for the purchase of fuel, erection or repairs of buildings and purchase and repairs of machinery, and
 - (ii) do all other things necessary for successfully operating the drainage works and for keeping the embankment thereof in repair as may be set forth in the by-law appointing the commissioner or commissioners; and
- (b) provide for defraying the annual cost of maintaining and operating the drainage works by assessment upon the lands and roads in any way liable to assessment therefor. R.S.O. 1990, c. D.17, s. 95 (1).

Fees, etc.

(2) The fees or other remuneration of a commissioner shall form part of the cost of the maintenance and repair of the drainage works. R.S.O. 1990, c. D.17, s. 95 (2).

Powers

(3) A drainage superintendent and a commissioner have the same powers as to entry on land as are given to the engineer and the engineer's assistants under subsection 12 (1). 1998, c. 18, Sched. A, s. 1 (14).

Section Amendments with date in force (d/m/y)

1998, c. 18, Sched. A, s. 1 (14) - 18/12/1998

Offence

96 Every person who wilfully interferes with or obstructs a drainage superintendent or a commissioner in the exercise of his or her powers under this Act is guilty of an offence and on conviction is liable to a fine of not more than \$2,000. R.S.O. 1990, c. D.17, s. 96.

COURTS OF REVISION**Court of revision**

97 (1) Subject to subsections (3), (4) and (5), a court of revision shall consist of three or five members appointed by the council of the initiating municipality and such members other than members of the council may be paid such remuneration and expenses as the council may by by-law provide. R.S.O. 1990, c. D.17, s. 97 (1).

Qualification

(2) Every such member shall be a person eligible to be elected a member of council or shall be a member of council. R.S.O. 1990, c. D.17, s. 97 (2).

Where more than one municipality

(3) Where the lands assessed for the drainage works extend from the initiating municipality into a neighbouring municipality, the court of revision shall consist of two members appointed by the council of the initiating municipality, of whom one shall be chair and one member appointed by the council of each of the neighbouring municipalities and the court shall hear and rule on appeals as if the entire area affected by the drainage works were in one municipality. R.S.O. 1990, c. D.17, s. 97 (3).

Quorum

(4) A majority of the members of the court of revision shall constitute and, despite the decision of any court, shall be deemed always to have constituted a quorum. R.S.O. 1990, c. D.17, s. 97 (4).

Jurisdiction and powers of quorum

(5) A quorum of the court of revision is sufficient and, despite the decision of any court, shall be deemed always to have been sufficient to exercise all of the jurisdiction and powers of the court of revision. R.S.O. 1990, c. D.17, s. 97 (5).

POWERS OF TRIBUNAL**Tribunal**

98 (1)-(3) REPEALED: 1999, c. 12, Sched. A, s. 9 (3).

Proceedings of Tribunal

(4) The Tribunal may,

- (a) hold sittings at any place in Ontario and in more than one place at the same time; and
- (b) procure reports from engineers and other professional persons in order to assist the Tribunal in reaching a decision. R.S.O. 1990, c. D.17, s. 98 (4); 2006, c. 19, Sched. A, s. 6 (1); 2006, c. 19, Sched. A, s. 6 (9).

(5) REPEALED: 1999, c. 12, Sched. A, s. 9 (3).

Clerk of Tribunal

(6) The clerk of the initiating municipality shall be the clerk of the Tribunal. R.S.O. 1990, c. D.17, s. 98 (6); 2006, c. 19, Sched. A, s. 6 (1).

Stenographic reporters

(7) The Tribunal may from time to time employ stenographic reporters to report hearings before the Tribunal and may fix their fees and such fees shall be included in the costs of the hearing and shall be borne and paid as the Tribunal may direct. R.S.O. 1990, c. D.17, s. 98 (7); 2006, c. 19, Sched. A, s. 6 (10).

Sittings of Tribunal

(8) Where the sittings of the Tribunal are to be held in a municipality, the municipality shall provide a suitable room for holding a hearing. R.S.O. 1990, c. D.17, s. 98 (8); 2006, c. 19, Sched. A, s. 6 (1).

Copy of decision

(9) The Tribunal shall send a copy of its final decision in any proceedings, including any order, to the parties who took part in the hearing and, if requested to do so by the Minister, to the Minister. 2019, c. 7, Sched. 19, s. 1.

Same

(9.1) A copy of the Tribunal's final decision that is sent under subsection (9) may be sent to the parties who took part in the hearing,

(a) by registered mail or courier at their addresses last known to the Tribunal; or

(b) by electronic means, if all the parties consent to receive the decision by electronic means. 2019, c. 7, Sched. 19, s. 1.

Costs, payment of

(10) The costs of any proceedings before the Tribunal shall be paid by or apportioned between the parties in such manner as the Tribunal considers proper, and where costs are ordered to be paid, the order for payment thereof may be filed in the Small Claims Court and is enforceable as a judgment or order of that court. R.S.O. 1990, c. D.17, s. 98 (10); 2006, c. 19, Sched. A, s. 6 (11).

What costs chargeable

(11) The costs chargeable or to be awarded in any proceedings may include the costs of witnesses and of procuring their attendance, the costs of secretarial staff and such other costs as the Tribunal may direct. R.S.O. 1990, c. D.17, s. 98 (11); 2006, c. 19, Sched. A, s. 6 (1).

Section Amendments with date in force (d/m/y)

1999, c. 12, Sched. A, s. 9 (2, 3) - 22/12/1999

2006, c. 19, Sched. A, s. 6 (1, 9-11) - 22/06/2006

2019, c. 7, Sched. 19, s. 1 - 29/05/2019

Proceeding commenced by notice

99 In any application, appeal or reference to the Tribunal, the action shall be commenced by serving notice upon the council of the initiating municipality and the clerk shall forthwith record the notice and except as otherwise provided send a copy of the notice to the Tribunal and to all persons assessed for the drainage works. R.S.O. 1990, c. D.17, s. 99; 2006, c. 19, Sched. A, s. 6 (1).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. A, s. 6 (1) - 22/06/2006

Extension of time

100 The Tribunal, in any case that it considers proper, may extend the time otherwise limited for application, appeal or reference. R.S.O. 1990, c. D.17, s. 100; 2006, c. 19, Sched. A, s. 6 (12).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. A, s. 6 (12) - 22/06/2006

Decision final

101 In any application, appeal or reference under sections 8, 10, 48, 49, 50, 54, 64, 65, 66 and 75 the decision of the Tribunal is final. R.S.O. 1990, c. D.17, s. 101; 2006, c. 19, Sched. A, s. 6 (1).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. A, s. 6 (1) - 22/06/2006

REFEREE

Appointment of referee

102 (1) The Lieutenant Governor in Council may appoint a referee for the purposes of this Act. R.S.O. 1990, c. D.17, s. 102 (1).

Acting referee

(2) The Lieutenant Governor in Council from time to time may appoint an acting referee or referees for the purposes of this Act, and an acting referee has the same powers and duties as the referee. R.S.O. 1990, c. D.17, s. 102 (2).

Qualifications of referee

(3) The referee or an acting referee shall be a judge of the Superior Court of Justice or a barrister of at least ten years standing at the bar of Ontario. R.S.O. 1990, c. D.17, s. 102 (3); 2001, c. 9, Sched. A, s. 1.

Remuneration

(4) Despite any other Act, the referee or an acting referee shall be paid such remuneration as the Lieutenant Governor in Council may determine, together with his or her reasonable expenses and expenses for secretarial services. R.S.O. 1990, c. D.17, s. 102 (4).

Referee not to practise under Act

(5) No referee or acting referee shall practise as a solicitor or barrister in any matter arising under this Act or act as legal agent or adviser in any such matter. R.S.O. 1990, c. D.17, s. 102 (5).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. A, s. 1 - 29/06/2001

Notice of time and place of hearing

103 (1) Where an application or appeal is made to the referee, he or she shall give an appointment to the parties to proceed therewith at such place and time and in such manner as to him or her may seem proper, but, unless the parties otherwise consent, a hearing shall be in the upper-tier municipality or single-tier municipality in which the drainage works is or is to be situate. R.S.O. 1990, c. D.17, s. 103 (1); 2002, c. 17, Sched. F, Table.

Part of works

(1.1) If only part of the drainage works is or is to be situate in an upper-tier municipality or single-tier municipality, the hearing shall be held in an upper-tier municipality or a single-tier municipality in which any part is or is to be situate. 2002, c. 17, Sched. F, Table.

Interpretation

(1.2) In subsections (1) and (1.1), a single-tier municipality does not include a single-tier municipality within a territorial district or within an upper-tier municipality and an upper-tier municipality includes a territorial district. 2002, c. 17, Sched. F, Table.

Use of court house, etc.

(2) When an appointment is given by the referee for a hearing in any municipality where a court house is situate, he or she has in all respects the same authority as a judge of the Superior Court of Justice with respect to the use of the court house or other place or apartments therein. R.S.O. 1990, c. D.17, s. 103 (2); 2001, c. 9, Sched. A, s. 1.

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. A, s. 1 - 29/06/2001

2002, c. 17, Sched. F, Table - 01/01/2003

Clerk of court

104 (1) The local registrar of the Superior Court of Justice shall be the clerk of the court of the referee and shall take charge of and file all the exhibits, and is entitled to the same fees for filings and for his or her services and for certified copies of decisions or reports as for similar services in the Superior Court of Justice. R.S.O. 1990, c. D.17, s. 104 (1); 2001, c. 9, Sched. A, s. 1; 2010, c. 16, Sched. 1, s. 2 (36).

Acting clerk

(2) In the absence of the local registrar of the Superior Court of Justice, the referee may appoint another person to act as clerk of the court of the referee for the purpose of the trial and for taking charge of and filing all exhibits and, while so acting,

the appointed person has the same powers and duties as the local registrar of the Superior Court of Justice and is entitled to such fees as the referee may direct for his or her attendance at the court. 2010, c. 16, Sched. 1, s. 2 (37).

Stenographic reporters

(3) The referee may, from time to time, employ stenographic reporters to report hearings and trials before the referee and may fix their fees. 2010, c. 16, Sched. 1, s. 2 (37).

Fees

(4) The fees of the acting clerk and the stenographic reporters shall be included in the costs and shall be borne and paid as the referee may direct. 2010, c. 16, Sched. 1, s. 2 (37).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. A, s. 1 - 29/06/2001

2010, c. 16, Sched. 1, s. 2 (36, 37) - 25/10/2010

Sheriffs, etc., to assist referee

105 Sheriffs, deputy sheriffs and other peace officers shall aid, assist and obey the referee in the exercise of the jurisdiction conferred by this Act whenever required so to do, and shall, upon the certificates of the referee, be paid such fees as they are entitled to for similar services at the sittings of the Superior Court of Justice for the trial of causes. R.S.O. 1990, c. D.17, s. 105; 2001, c. 9, Sched. A, s. 1; 2020, c. 18, Sched. 4, s. 11.

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. A, s. 1 - 29/06/2001

2020, c. 18, Sched. 4, s. 11 - 30/06/2021

Powers of referee

106 (1) The referee has original jurisdiction,

- (a) to entertain any appeal with respect to the report of the engineer under section 47;
- (b) to determine the validity of, or to confirm, set aside or amend any petition, resolution of a council, provisional by-law or by-law relating to a drainage works under this Act or a predecessor of this Act;
- (c) to determine claims and disputes arising under this Act, including, subject to section 120, claims for damages with respect to anything done or purporting to have been done under this Act or a predecessor of this Act or consequent thereon;
- (d) to entertain applications for orders directing to be done anything required to be done under this Act;
- (e) to entertain applications for orders restraining anything proposed or purporting to be done under this Act or a predecessor of this Act; and
- (f) over any other matter or thing in relation to which application may be made to him or her under this Act. R.S.O. 1990, c. D.17, s. 106 (1).

Jurisdiction of referee

(2) Subject to section 101, the referee has jurisdiction to hear appeals from any decision or order of the Tribunal and for such purpose may make any order that the Tribunal might have made and may substitute his or her opinion for that of the Tribunal. R.S.O. 1990, c. D.17, s. 106 (2); 2006, c. 19, Sched. A, s. 6 (1).

Idem

(3) The referee has jurisdiction to entertain and dispose of any interlocutory application relating to any matter otherwise within his or her jurisdiction and his or her order thereon is final. R.S.O. 1990, c. D.17, s. 106 (3).

Determination of questions of fact or law

(4) The referee has power to determine all questions of fact or law that it is necessary to determine for the purpose of disposing of any matter within his or her jurisdiction and to make such decision, order or direction as may be necessary for such purpose. R.S.O. 1990, c. D.17, s. 106 (4).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. A, s. 6 (1) - 22/06/2006

Referee may make rules

107 (1) The referee may, with the approval of the Lieutenant Governor in Council, make rules regulating the practice and procedure to be followed in all proceedings before him or her under this Act and may prescribe tariffs and fees therefor. R.S.O. 1990, c. D.17, s. 107 (1).

Referee may give directions

(2) The referee may give directions relating to the conduct of proceedings before him or her and as to the persons who shall be parties to such proceedings. R.S.O. 1990, c. D.17, s. 107 (2).

Assessment of costs

108 Costs shall be assessed by the referee, or he or she may direct the assessment thereof by the local registrar of the Superior Court of Justice with whom the papers are filed or by an assessment officer. R.S.O. 1990, c. D.17, s. 108; 2001, c. 9, Sched. A, s. 1.

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. A, s. 1 - 29/06/2001

Costs in discretion of referee

109 The costs of any proceedings before the referee are in the discretion of the referee. R.S.O. 1990, c. D.17, s. 109.

Tariff of costs

110 In the absence of other provisions, the tariff of costs in any application or proceeding under this Act shall be that of the court that would have jurisdiction to try a civil action involving a similar amount of money or type of proceeding. R.S.O. 1990, c. D.17, s. 110.

Proceedings instituted by notice

111 (1) Proceedings for the determination of claims and disputes and for the recovery of damages, or for an order directing or restraining the doing of any act or thing shall be instituted by serving ten clear days notice setting forth the grounds of the claim upon all persons concerned. R.S.O. 1990, c. D.17, s. 111 (1).

Notice filed in Superior Court of Justice

(2) A copy of the notice with an affidavit of service thereof shall be filed with the local registrar of the Superior Court of Justice for the area in which the initiating municipality is situate, and the notice shall be filed and served within two years from the time the cause of complaint arose. R.S.O. 1990, c. D.17, s. 111 (2); 2001, c. 9, Sched. A, s. 1.

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. A, s. 1 - 29/06/2001

Affidavits filed before motion

112 All affidavits intended to be used in support of a motion shall be filed with the local registrar of the Superior Court of Justice not fewer than five days before the return day of the motion. R.S.O. 1990, c. D.17, s. 112; 2001, c. 9, Sched. A, s. 1.

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. A, s. 1 - 29/06/2001

Extension of time for appeal

113 The referee may, where he or she considers it proper, extend the time otherwise limited for appeals or other proceedings. R.S.O. 1990, c. D.17, s. 113.

When referee proceeds on view

114 When the referee proceeds partly on view or on any special knowledge or skill possessed by him or her, he or she shall put in writing a statement thereof sufficiently full to allow the Divisional Court to form a judgment of the weight that should be given thereto, and he or she shall state as part of his or her reasons the effect given by him or her to such statement. R.S.O. 1990, c. D.17, s. 114.

Clerk to forward notice of filing

115 The decision of the referee, with the evidence, exhibits and statement, if any, of inspection or of technical knowledge and the reason for his or her decision, shall be filed in the office of the local registrar of the Superior Court of Justice for the area in which the initiating municipality is situate, and notice of the filing shall be sent by the clerk, as soon as reasonably possible, to the solicitors of the parties appearing by solicitor and to the other parties not represented by a solicitor, and also

to the clerk of each municipality affected. R.S.O. 1990, c. D.17, s. 115; 2001, c. 9, Sched. A, s. 1; 2010, c. 16, Sched. 1, s. 2 (38).

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. A, s. 1 - 29/06/2001

2010, c. 16, Sched. 1, s. 2 (38) - 25/10/2010

Copy of decision to be sent to Minister and municipality

116 A copy of the decision certified by the referee or clerk of the court shall be sent or delivered,

- (a) to the Minister without charge; and
- (b) to the clerk of every municipality interested in the drainage works in question upon receipt of the sum chargeable therefor. R.S.O. 1990, c. D.17, s. 116.

Amendment of by-law

117 The provisional by-law or the by-law of the initiating municipality and of any other municipality interested shall be amended so as to incorporate and carry into effect the decision of the referee or such decision as varied on appeal, as the case may be. R.S.O. 1990, c. D.17, s. 117.

Assessing of costs payable

118 (1) Except as provided by subsections (2), (3) and (4), all damages and costs payable by a municipality and arising from proceedings taken under this Act shall be levied upon the lands and roads in any way assessed for the drainage works for construction, improvement, maintenance or repair in such manner as the referee or court may determine, and may be assessed, levied and collected in the same manner as rates assessed, levied and collected for maintenance under this Act. R.S.O. 1990, c. D.17, s. 118 (1).

Municipality in default to pay costs

(2) Where such damages and costs become payable owing to any improper action, neglect, default or omission on the part of the council of any municipality or of any of its officers or employees in the construction, improvement, maintenance or repair of the drainage works or in carrying out the provisions of this Act, the referee or court may direct that the whole or any part of such damages and costs shall be borne by the municipality and be payable out of the general funds thereof. R.S.O. 1990, c. D.17, s. 118 (2).

In cases of settlement

(3) Where in any such proceedings by or against a municipality a settlement is made, the damages and costs payable under the terms of the settlement by any municipality shall be borne and paid as directed by the referee or court, and in making such direction, the referee or court shall have regard to the provisions of subsection (2). R.S.O. 1990, c. D.17, s. 118 (3).

Where extension of drainage works necessary

(4) Where, in the opinion of the referee or court, damages and costs have become payable by reason of the insufficiency of the capacity or outlet of a drainage works and it is necessary in order to prevent a continuance of such damage to improve the drainage works, the referee or court may permit the council of the municipality to add such damages and costs to the engineer's estimate of the cost of any such improvement. R.S.O. 1990, c. D.17, s. 118 (4).

Transfer to other court

119 Where an action is brought or is pending before the court of revision or the Tribunal or the referee and the matter should properly be heard by one of the other tribunals, the action may be transferred to the other tribunal without invalidating the proceedings provided the action was launched within the time limits prescribed in this Act. R.S.O. 1990, c. D.17, s. 119; 2006, c. 19, Sched. A, s. 6 (1).

Section Amendments with date in force (d/m/y)

2006, c. 19, Sched. A, s. 6 (1) - 22/06/2006

Actions may be transferred to referee

120 (1) Where an action is brought or is pending and the court in which the action is brought or is pending or a judge thereof is of opinion that the relief sought therein is properly the subject of a proceeding under this Act or that it may be more conveniently tried before and disposed of by the referee, the court or judge may, on the application of either party, at any stage of the action make an order transferring it to the referee on such terms as appear just, and the referee shall thereafter give directions for the continuance of the action before him or her. R.S.O. 1990, c. D.17, s. 120 (1).

Limitation

(2) This section applies only where the action is brought within the period limited by this Act for taking proceedings on notice. R.S.O. 1990, c. D.17, s. 120 (2).

APPEAL TO DIVISIONAL COURT

Appeal from decision of referee

121 Except as otherwise provided in this Act, the decision of the referee or acting referee may be appealed to the Divisional Court within thirty days after the filing thereof with the local registrar of the Superior Court of Justice or within such further time as the referee or Divisional Court may allow. R.S.O. 1990, c. D.17, s. 121; 2001, c. 9, Sched. A, s. 1.

Section Amendments with date in force (d/m/y)

2001, c. 9, Sched. A, s. 1 - 29/06/2001

GENERAL

Interprovincial drainage works, from Ontario into adjoining province

122 (1) Where it is considered necessary or expedient to extend a drainage works constructed under this Act from Ontario into or through lands in an adjoining province, or to extend a drainage works from an adjoining province into or through lands in Ontario, the Lieutenant Governor in Council may authorize the Minister to enter into an agreement with a designated officer of the adjoining province as to the proportion of the cost of any drainage works in the adjoining province to be borne and paid by Ontario and as to the proportion of the cost of any drainage works in Ontario to be borne and paid by the adjoining province. R.S.O. 1990, c. D.17, s. 122 (1).

Apportionment of cost

(2) Where such a drainage works extends from Ontario into or through lands in an adjoining province, the Minister may order a local municipality in Ontario in which the lands affected by the drainage works are situate to provide funds to pay for the proportion of the cost of the drainage works in the adjoining province to be borne and paid by Ontario, and thereupon this Act applies with necessary modifications to such drainage works. R.S.O. 1990, c. D.17, s. 122 (2).

Extension of drainage works from adjoining province

(3) Where a drainage works extends from an adjoining province into or through lands in Ontario, the Minister may order a local municipality into which the drainage works extends to provide for the construction of the necessary drainage works, and thereupon this Act applies with necessary modifications to such drainage works, and the contribution to the drainage works from the other province shall be paid to such local municipality on the completion of the drainage works. R.S.O. 1990, c. D.17, s. 122 (3).

Initiation of drainage works in unorganized territory

123 The Minister in his or her discretion and from time to time may prescribe the manner in which a drainage works shall be initiated and carried out in territory without municipal organization and the manner in which and the terms and conditions under which grants may be made. R.S.O. 1990, c. D.17, s. 123.

Authorization of emergency work

124 Where the Minister declares that an emergency exists, the council of a municipality may authorize emergency work under this Act before obtaining and adopting an engineer's report. R.S.O. 1990, c. D.17, s. 124.

Regulations

125 (1) The Minister may make regulations,

- (a) prescribing forms for the purposes of this Act and providing for their use;
- (b) governing the methods by which notices and other documents that are required or permitted to be sent or served under this Act must be sent, including the conditions applying to each permitted method and the date on which the notice or other document shall be deemed to have been sent or served;
- (c) prescribing any matter this Act describes as being prescribed or dealt with in the regulations. 2010, c. 16, Sched. 1, s. 2 (39); 2020, c. 18, Sched. 4, s. 12 (1).

Adoption of guidelines, etc.

(2) A regulation may adopt by reference, in whole or in part, with the changes that the Minister considers necessary, any guideline, protocol or procedure, including a guideline, protocol or procedure established by the Minister, and may require compliance with any guideline, protocol or procedure so adopted. 2020, c. 18, Sched. 4, s. 12 (2).

Amendments to guidelines, etc.

(3) The power to adopt by reference and require compliance with a guideline, protocol or procedure in subsection (2) includes the power to adopt a guideline, protocol or procedure as it may be amended from time to time. 2020, c. 18, Sched. 4, s. 12 (2).

When effective

(4) The adoption of an amendment to a guideline, protocol or procedure that has been adopted by reference comes into effect upon the Ministry publishing notice of the amendment in *The Ontario Gazette* or in the registry under the *Environmental Bill of Rights, 1993*. 2020, c. 18, Sched. 4, s. 12 (2).

Section Amendments with date in force (d/m/y)

2010, c. 16, Sched. 1, s. 2 (39) - 25/10/2010

2020, c. 18, c. 18, Sched. 4, s. 12 (1, 2) - 30/06/2021

Français

[Back to top](#)

COURT OF APPEAL FOR ONTARIO

CITATION: Union Gas Limited v. Norwich (Township), 2018 ONCA 11

DATE: 20180110

DOCKET: C62779

LaForme, Pepall and van Rensburg JJ.A.

BETWEEN

Union Gas Limited

Applicant
(Appellant in Appeal)

and

The Corporation of the Township of Norwich

Respondent
(Respondent in Appeal)

Crawford Smith and Emily Sherkey, for the appellant

Roberto Aburto and Jacob Polowin, for the respondent

Philip Tunley, for the intervener, Ontario Energy Board

Heard: August 14, 2017

On appeal from the order of Justice M.A. Garson of the Superior Court of Justice,
dated September 7, 2016.

van Rensburg J.A.:

OVERVIEW

[1] This appeal concerns a dispute between a utility and a rural municipality over the sharing of the utility's costs to relocate parts of a gas pipeline as a result of the rural municipality's construction of certain drainage works. The disposition of the appeal requires the court to consider the terms of a franchise agreement dated September 28, 2004 between the parties (the "Franchise Agreement") and provisions of the *Drainage Act*, R.S.O. 1990, c. D.17 (the "Act").

[2] Union Gas Limited ("Union") asserts that The Corporation of the Township of Norwich ("Norwich") is required to pay Union 35% of its costs to relocate a gas pipeline necessitated by certain drainage works, in accordance with the Franchise Agreement. Norwich argues that Union should assume the full cost of relocation, as its engineer directed, under s. 26 of the Act.

[3] The application judge held that the cost to relocate gas works when a drain is constructed under the Act is an increase in the cost of "drainage works", and therefore subject to s. 26 of the Act, which provides for the utility to assume the entirety of the increased cost of drainage works caused by the existence of the public utility's works. He held that the cost-sharing provisions of the Franchise Agreement did not "trump and hold priority over" s. 26 of the Act.

[4] Union appeals, arguing that the application judge erred: (1) in interpreting s. 26 of the Act to apply to the cost of relocating gas works; and (2) in concluding that the Act overrides the cost-sharing provisions of the Franchise Agreement.

[5] The Ontario Energy Board (the “OEB”) intervened, taking no position on the facts of the appeal, but to provide submissions on the interpretation of the term “drainage works” in the Act and the policy behind the cost-sharing provisions of the Franchise Agreement.

[6] For the reasons that follow, I would allow the appeal. It is unnecessary to determine in this appeal the full scope of s. 26, and in particular whether the reference to the increased cost of “drainage works” could include a utility’s cost to relocate gas works. The cost-sharing provisions of the Franchise Agreement apply to the parties’ dispute. The application judge erred in law when he refused to give effect to the parties’ agreement on the basis that it could not “oust or override” the provisions of the Act.

FACTS

[7] Under s. 4 of the Act a landowner may petition a municipality to undertake drainage works. Where the municipality’s council decides to proceed with the construction of drainage works, it appoints an engineer under s. 8 to plan the works, including to assess their cost. The engineer is required to submit a report

to the municipality. If the council proceeds based on the report, it passes a by-law adopting the report and authorizing the drainage works.

[8] The engineer's report is required to assess landowners and utilities for benefit, outlet liability, injury liability and special benefits (ss. 21 to 24). Section 26 allows all of the increase in the cost of drainage works due to the presence of public utilities to be assessed by the engineer against those utilities. The section provides as follows:

In addition to all other sums lawfully assessed against the property of a public utility or road authority under this Act, and despite the fact that the public utility or road authority is not otherwise assessable under this Act, the public utility or road authority shall be assessed for and shall pay all the increase of cost of such drainage works caused by the existence of the works of the public utility or road authority.

[9] Section 48(1) provides for a right of appeal by a landowner or public utility from an engineer's report, to the Agriculture, Food and Rural Affairs Appeal Tribunal.

[10] In April 2012, a landowner petitioned Norwich regarding two improvements to the Otter Creek Municipal Drain. Norwich's council appointed an engineer. The engineer prepared one report for both projects, and assessed Union \$1,180 under s. 26 of the Act for costs relating to boring steel pipes across the gas main. This assessment was not disputed.

[11] The report also identified a conflict between a Union gas pipeline and the proposed drainage work that would require the gas pipeline to be moved. The report stated that if any utilities required relocation “the extra costs incurred shall be borne by the utility involved in accordance with the provisions of section 26 of the [Act].” In February 2014, the Norwich council adopted a by-law approving the engineer’s report.

[12] Union did not appeal the engineer’s report. Instead, with respect to the gas pipeline that required relocation, it issued an invoice to Norwich seeking a 35% contribution, relying on a cost-sharing mechanism in the Franchise Agreement.

[13] The Franchise Agreement is based on a model franchise agreement, whose terms were approved by the OEB in accordance with the *Municipal Franchise Act*, R.S.O. 1990, c. M.55. The Franchise Agreement allows Union to operate its gas infrastructure within Norwich’s territorial boundaries.

[14] Section 12 of the Franchise Agreement permits Norwich to request Union to relocate any part of the gas system where such relocation is necessary to alter or improve any highway or municipal work, and provides for cost-sharing. The applicable paragraphs are as follows:

- (a) If in the course of constructing, reconstructing, changing, altering or improving any highway or any municipal works, [Norwich] deems that it is necessary to take up, remove or change the location of any part of the gas system, [Union] shall, upon notice to do so, remove and/or relocate within a reasonable period of

time such part of the gas system to a location approved by the Engineer/Road Superintendent.

(d) The total relocation costs as calculated above [described in detail in paragraph (c)] shall be paid 35% by [Norwich] and 65% by [Union] except [an exception follows that does not apply here.]

[15] Section 13 of the Franchise Agreement provides:

The Agreement is subject to the provisions of all regulating statutes and all municipal by-laws of general application, except by-laws which have the effect of amending this Agreement.

[16] Norwich did not pay Union's invoice. The work proceeded, and Union brought an application to the Superior Court to determine the rights of the parties.

DECISION OF THE APPLICATION JUDGE

[17] The application judge characterized the issue as whether Union's gas pipeline relocation costs fell within the scope of the Franchise Agreement or s. 26 of the Act.

[18] The application judge characterized the Act as "a complete and comprehensive code" dealing with drainage works. He considered the definition of "drainage works" as including "a drain constructed by any means" and he interpreted the Act as allowing either municipalities or utilities to reconstruct portions of existing gas pipelines. He concluded that moving gas pipelines would fall within the broad definition of "drainage works", and that this cost would accordingly be subject to the cost-sharing mechanism of s. 26 of the Act. He

considered that it was the intent of the Act to defer to the engineer's report regarding cost allocation, and that Union was subject to the assessment, which it had not appealed.

[19] The application judge concluded that the Franchise Agreement did not "oust or override" the provisions of the Act. He referred to *Seidel v. Telus Communications Inc.*, 2011 SCC 15, [2011] 1 S.C.R. 531, at para. 91, citing *Brand v. National Life Assurance Co. of Canada* (1918), 44 D.L.R. 412 (Man. K.B.), at para.15, as authority that "no mere contract *inter partes* can take away that which the law has conferred."

[20] The application judge stated that the cost-sharing provisions of the Franchise Agreement did not apply to all costs associated with drains. "Municipal works" is not defined in the Franchise Agreement. Moreover, the Gas Franchise Handbook, to which the Franchise Agreement refers, states that the cost-sharing mechanism will apply "in most circumstances", suggesting it will not always apply. He noted that the Franchise Agreement provides that it is subject to "the provisions of all regulating statutes", which includes the Act.

[21] The application judge ordered Union to pay the full cost of the gas pipeline relocation. The clear and unambiguous language of the engineer's report was that Union would bear the full cost of any utility relocation, and Union did not appeal the report despite a right to do so under s. 48 of the Act.

DISCUSSION AND ANALYSIS

[22] In my view the application judge erred in his analysis and in the result. First, I address his conclusion that the Act overrides the provisions of the Franchise Agreement.

[23] The foundation of this conclusion is the application judge's interpretation of *Seidel* as standing for a general principle that "no mere contract *inter partes* can take away that which the law has conferred". There is no such general principle, and the application judge was not correct in his interpretation of what was said, or quoted from, in *Seidel*.

[24] In *Seidel* the court considered whether a provision in a cell phone service agreement requiring arbitration of claims was enforceable when B.C. consumer protection legislation expressly prohibited contracting out of its terms. In the course of the minority judgment, and before turning to the modern approach to arbitration, LeBel and Deschamps JJ. described the courts' traditional hostility towards arbitration, as contrary to public policy, because it was seen to challenge the jurisdiction of the courts. It was in this context that they quoted a passage from the 1918 decision in *Brand* which stated in part:

The true ground for holding that the jurisdiction of the courts cannot be ousted by an agreement between parties is that the courts derive their jurisdiction either from the statute or common law, and no mere contract *inter partes* can take away that which the law has conferred.

[25] The traditional view that parties could not, by contracting for arbitration, “oust” the jurisdiction of the courts, has been overtaken by modern authorities, including *Seidel* itself, recognizing that arbitration clauses will be enforced absent legislative language to the contrary (at para. 42).

[26] The application judge took a part of the quotation noted above out of context as authority that parties cannot contract out of statutory provisions. As discussed below, the law is to the contrary.

[27] In *Ontario (Human Rights Commission) v. Etobicoke (Borough)*, [1982] 1 S.C.R. 202, at para. 19, the Supreme Court endorsed the principle that parties can contract out of benefits conferred by statute, unless it would be contrary to public policy or prohibited by the statute itself. In that case, a provision of a collective agreement that was contrary to the *Ontario Human Rights Code*, R.S.O. 1970, c. 318, s. 4(6), was unenforceable. Similarly, in *Seidel* a provision requiring the arbitration of disputes was unenforceable against consumers because of the relevant B.C. consumer protection legislation. See also *Fleming v. Massey*, 2016 ONCA 70, 128 O.R. (3d) 401, leave to appeal to SCC refused, 2016 CarswellOnt 9353, in which this court stated that courts should exercise “extreme caution in interfering with the freedom to contract on the grounds of public policy” before concluding that employers and workers could not contract out of the workers’ compensation regime absent a contrary legislative indication (at para. 34).

[28] Second, the application judge, informed by his first error, did not go on to consider whether the Franchise Agreement cost-sharing provisions applied to the parties' dispute.

[29] The correct approach therefore is: first, to consider whether the Act would prohibit contracting out of s. 26, and whether it would be contrary to public policy to recognize an agreement that does so; and second, to interpret the Franchise Agreement itself, to determine whether there is anything in the contract that would take the parties out of the cost-sharing mechanism to which they have agreed, in the case of drainage works undertaken under the Act.

[30] The first issue, whether the Act prohibits contracting out of s. 26, can be addressed in short course. The application judge characterized the Act as a "complete and comprehensive code with regard to who does what and who pays for what", in support of his conclusion that the provisions of the Act override the parties' agreement. The issue here however is whether the Act expressly, or by necessary implication, would prohibit a utility and a municipality from arriving at their own agreement respecting the sharing of costs, where the construction of the drainage works requires the relocation of a pipeline. I see nothing in the legislative scheme that would preclude such a cost-sharing agreement in circumstances where the utility is required by the municipality to alter its pipeline to accommodate drainage works. Enforcement of the parties' contractual cost-sharing agreement would not undermine the detailed procedures set out in the

Act, for the proposal, planning and approval of drainage works, and the sharing of the municipality's own costs. Indeed, as the application judge noted, referring to a 1986 OEB report, the cost-sharing mechanism in s. 12 was developed by the OEB as a disincentive to municipalities to require gas pipeline relocation.

[31] And there is nothing in the legislative scheme to suggest that the ability to contract for the allocation of relocation costs between a municipality and a utility is contrary to public policy. In approving this specific Franchise Agreement, the OEB explicitly found that the agreement was "in the public interest" in a Decision and Order dated September 16, 2004. The Act is not a public policy statute, a point that was acknowledged in argument by the respondent.

[32] Once it is determined that the Act does not prohibit contracting out of its cost-allocation provisions, and that contracting out would not be contrary to public policy, the question is whether the Franchise Agreement applies to the current dispute.

[33] The Franchise Agreement provides for the sharing of the utility's costs occasioned by municipal works. "Municipal works," which is not defined in the Franchise Agreement, is a broad term that, given its ordinary meaning, would include drainage works undertaken by a municipality. Municipal drainage works are approved, constructed, repaired and maintained by a municipality (see ss. 4, 5, 8, 58 and 74 of the Act). Section 5(g) of the Franchise Agreement specifically

refers to gas systems affecting a “municipal drain”, and accordingly contemplates that drainage works are part of the municipal works covered by the agreement. There is nothing in the Franchise Agreement that would exclude drainage works from “municipal works”, or that would remove from its cost-sharing provisions the drainage works undertaken by Norwich in this case.

[34] The Franchise Agreement describes the cost-sharing mechanism in clear language and it unambiguously applies when a municipality requests relocation of a gas system to accommodate *any* municipal works. Section 13 does not assist Norwich in its argument that the Act, and not the Franchise Agreement, would apply to this dispute. That section provides that the Franchise Agreement is subject to the provisions of all “regulating statutes” and municipal by-laws of “general application,” but specifically excludes “by-laws which have the effect of amending [the] Agreement.” The appellant says, without relying on any authority, that the Act is a regulating statute to which the Franchise Agreement is subject, and therefore overrides the provisions of the agreement. I disagree. I would interpret “regulating statute” in the context of this agreement, as referring to health and safety, environmental and other like statutes that would regulate the construction of and work on a gas system by the utility within the regional municipality. Section 13 does not exempt the parties from the cost-allocation provisions to which they have agreed. As for by-laws, the intention is clear (and the respondent acknowledges) that any by-law (including the one passed in this

case approving the engineer's report), would be unenforceable if it sought to impose an assessment of costs other than that to which the parties agreed. As such, the Franchise Agreement would override Norwich's by-law approving the engineer's report to the extent it purported to assess Union for the entire cost of relocating its pipeline.

CONCLUSION AND DISPOSITION

[35] The appellant argued forcefully that s. 26 would apply to the increased cost of the drainage works to the municipality, but not to the relocation of a gas system required as a result of drainage works, which work could only by statute be performed by the utility. It is not necessary for the disposition of this appeal to determine this issue. The cost-sharing mechanism in the Franchise Agreement prevails over any assessment that was or could have been made under the Act, against the utility, as a result of the relocation of its pipeline to accommodate the municipal work undertaken here.

[36] For these reasons I would allow the appeal, and substitute for the application judge's order an order declaring that Norwich is required to pay Union 35% of the total costs to relocate Union's gas system; declaring that Union is not subject to an assessment under s. 26 of the Act for such costs; and directing Norwich to pay Union \$26,808.39 plus prejudgment and post-judgment interest in accordance with ss. 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c.

C.43. I would set aside the application judge's order for costs in favour of Norwich, and substitute an order requiring Norwich to pay Union the costs of the application in the sum of \$18,000 inclusive of HST and disbursements. I would order costs of the appeal to Union, to be paid by Norwich, in the agreed sum of \$23,000, also inclusive of HST and disbursements, with no costs sought by or awarded to the OEB.

"K. van Rensburg J.A."
"I agree H.S. LaForme J.A."
"I agree S.E. Pepall J.A."

Released: January 10, 2018