



Overview of the
Drainage Act

**Drainage Act and
Conservation
Authorities Act
Protocol Training**

Florence - January 14, 2013
Ottawa - January 17, 2013
Guelph - January 30, 2013



Why Do We Need a Drainage Act?

- To resolve drainage disputes;
- To provide a procedure for constructing “drainage works” to resolve drainage problems

Drainage disputes fall under the authority of courts:

- “Common law”
- Decided by judges; based on precedence & use
- Drainage disputes fall into two categories:
 1. Natural Watercourses
 2. Surface Water

1. Natural Watercourses under Common Law

- Right of drainage
- Right to use water for domestic purposes
- Can't dam a natural watercourse
- Must accept the water
- Can't interfere with the channel to the detriment of others



2. Surface Water under Common Law:

- No right of drainage
- Lower landowner does not have to accept
- Can protect their property: berms/dykes



2. Surface Water under Common Law:

- If collected, grounds for lawsuit
- Can be held liable for damages
- No right to drain into private ditches



Drainage Act

- An alternative to resolve Common Law disputes
- Procedure for constructing “drainage works” to resolve drainage problems
- Drainage Act defines “drainage works” as:
“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”


Drainage Act: Process to Initiate a New Drain

- **Petition** – all new drains initiated by a petition, usually by landowners, to the municipal council
- **On-Site Meeting** – council appoints an engineer who has a meeting with the area property owners
- **Preliminary Report & Meeting** – engineer may prepare a preliminary report to examine options and the associated costs.
- **Field Survey** – engineer surveys the area to determine features and possible drain route




Drainage Act:

Process to Initiate a New Drain

- **Final Report & Meeting** – engineer writes a report that contains the recommended drainage design & recommended cost-sharing between owners
 - **Appeals** – all affected owners have right to appeal:
 - Court of Revision on assessment issues
 - Tribunal on technical issues
 - Referee
 - **Adoption of Report by By-law**
 - **Construction of drain**
 - **Assessment of costs to landowners**
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What Is A Municipal Drain?

- Community Project: Developed through a public process and paid by the property owners in the watershed of the drain
 - Legal Existence: Engineer's report, adopted by municipal by-law
 - Municipal Infrastructure: Local municipality is responsible to manage
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Management Of Existing Drains

MANAGEMENT ACTIVITY

- Municipal (council) obligation to maintain and repair drains
 - May undertake improvements or modifications to existing drains with engineer's report
 - Procedures to update assessment schedules
 - Power to enforce re: blockages & damage to drains
 - Ability to abandon drains
 - Drainage superintendent is council's agent tasked with the management responsibility
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Maintenance & Repair

SECTION 74:

Any drainage works constructed under a by-law passed under this Act ...

...shall be maintained and repaired by each local municipality through which it passes...

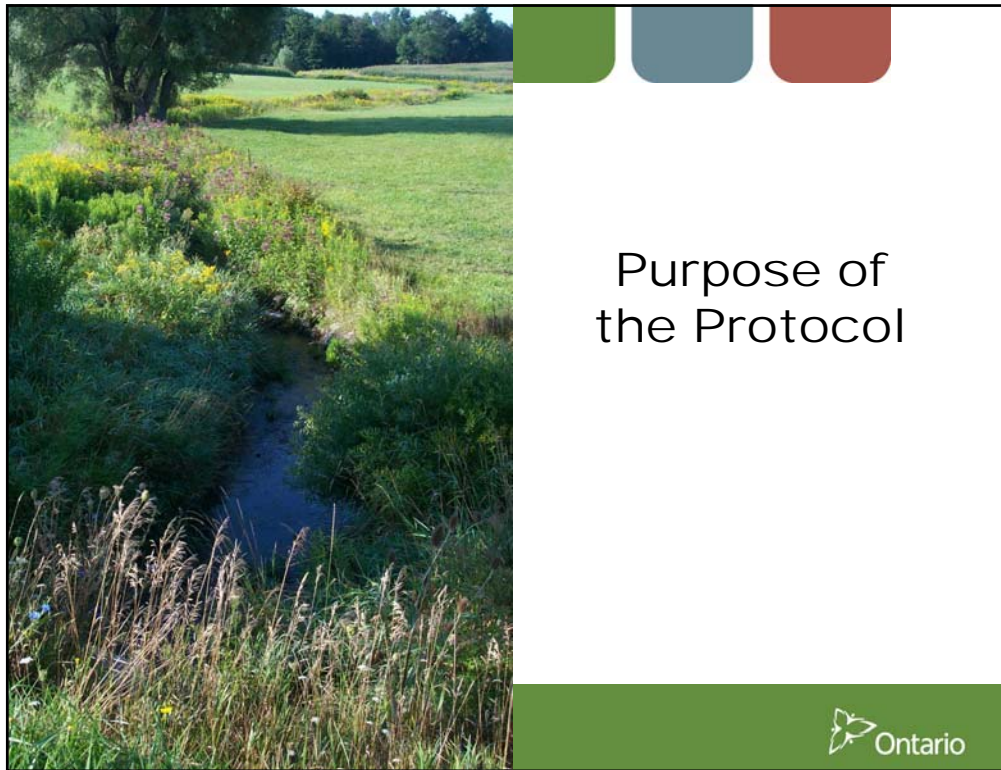
...at the expense of all the upstream lands and roads ...

...in the proportion determined by the then current by-law pertaining thereto...

“maintenance” = preservation of drainage works

“repair” = restoration of a drainage works to its original condition





Purpose of the Protocol

- Overlap of legislation:
 - Conservation Authorities Act & Regulations regulate watercourses and wetlands
 - Municipalities required to fulfill responsibilities on municipal drains (watercourses)
- Protocol developed to respect the intent of both statutes
- During development of protocol, common objectives were discovered.