

DRAINAGE ACT

Revised Statutes of Ontario, 1990, Chapter D.17

Amended by:

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, Sch. A, s. 6
 2006, c. 21, Sch. C, s. 107

2006, c. 32, Sch. C, s. 14
 2006, c. 35, Sch. C, s. 27
 2009, c. 33, Sch. 1, s. 9
 2010, c. 16, Sch. 1, s. 2

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;

“**benefit cost statement**” means a statement relating the anticipated benefits expressed in dollars to the total estimated cost of the drainage works;

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

- (a) 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
- (b) 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
- (c) 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
- (d) a plan of subdivision has been registered;

“**commissioner**” means a **commissioner** appointed by a municipality by by-law;

“**conservation authority**” means a **conservation authority** established under the *Conservation Authorities Act*;

“**court of revision**” means a **court of revision** constituted under this Act;

“**Director**” means the **Director** appointed for the purposes of this Act;

“**drainage superintendent**” means a drainage **superintendent** appointed by a municipality by by-law;

“**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;

“**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;

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

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

“**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;

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

“**maintenance**” means the preservation of a drainage works;

“**Minister**” means the **Minister of Agriculture, Food and Rural Affairs**;

“**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;

NOTES AND COMMENTS

- Reference: S. 22 – Instructions to engineer for assessing for benefit
- Reference: S. 7
- Reference: S. 25 – Block assessments
- Reference: Sections 93(2) and 95(1)
- Reference: S. 97 and 52
- Reference: S. 91
- Reference: S. 93
- Definition is quite inclusive, but there are limits; e.g. cannot use *Drainage Act* for works for irrigation
- Reference: S. 8
- Note that Ontario Land Surveyors can also do reports under this Act.
- Reference: S. 78 and 77
- Reference: S. 23
- Reference: S. 37 and 86
- Reference: S. 74
- Reference: S. 23

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

“**preliminary report**” means an **engineer’s** report containing the information specified in section 10;

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

“**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;

“**repair**” means the restoration of a drainage works to its original condition;

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

“**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;

“**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;

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

“**Tribunal**” means the Agriculture, Food and Rural Affairs Appeal **Tribunal** continued under the *Ministry of Agriculture, Food and Rural Affairs Act*.
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.

- “Owner” is used throughout Act, but is very important in S. 4
- Reference: S. 10

- References: S. 26 and S. 69

- References: Sec. 74 and 75
- Primary reference: S. 8
- Primary references: S. 26, 69, 77.

- Reference: S. 24

- Reference: S. 15

- Primary References: S. 48-51, 53, 64, and 98-101

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.

Filing of agreement

2(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.

Registered agreement binding on successors

2(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.

Exception

2(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.

- Reference: Factsheet “Mutual Agreement Drains”
- Note pros and cons of Mutual Agreement Drains.

- Registration of the agreement is up to the parties.

- Agreement is only binding on future owners if registered.

REQUISITION DRAINS

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

Existing ditches

3(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).

- Requisition Drains sections repealed in 2010
- **Award Drains:** Refer to “Mutual Agreement Drains” factsheet. The municipality is not responsible for maintaining award drains unless specifically stated in the report.

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**.

Form of petition

4(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**.

Petition where area lies on each side of boundary line

4(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.

- S. 4 projects are eligible for grants - S. 85(a)(i)
- For more information, refer to Clerk’s Guide in Manual.
- Note difference between “area requiring drainage” and “drainage area” or “watershed”
- “Drainage works” defined in S. 1
- “Owner” and “property” in S. 1
- 4 criteria for a valid petition – each one on its own makes it valid

Person deemed owner

4(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.

Persons jointly assessed

4(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.

- If current owner isn’t in the last revised assessment roll, the owner must demonstrate ownership to clerk.
- Partnerships – all must sign
- Corporations, properties held in trust – signing authority must sign
- Clerk should review this aspect of petition.

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 each petitioner, the **clerk** of each local municipality that may be affected, and the **conservation authority** that has jurisdiction over any lands in the area or, if no such **conservation authority** exists, the **Minister of Natural Resources**.
R.S.O. 1990, c. D.17, s. 5 (1); 2010, c. 16, Sched. 1, s. 2 (3, 4).

- Council must make decision. They do have the right to say “No”, but the decision must have grounds.
- Responsibility of Clerk
- Trib. decision maybe appealed to Referee (S. 101 and 106-2)

Appeal to Tribunal

5(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).

- Minister’s right to refer to Tribunal is delegated to the Director

Notice that environmental appraisal is required

6(1) Upon receipt of a notice from the initiating municipality under subsection 5 (1), a local municipality, **conservation authority** or the **Minister of Natural Resources**, as the case may be, may send to the **council** of the initiating municipality within thirty days a notice that an environmental appraisal of the effects of the drainage works on the area is required, and the cost thereof shall be paid by the party who requested it.

Authorization for environmental appraisal

6(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.

Appeal

6(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).

- Env. Appraisal is not the same as Env. Assessment
- Four parties may request Env. Appraisal: Local municipality, MNR, CA, & initiating mun.
- NOTE: – Party requesting must pay for Environmental Appraisal.
- Trib. decision maybe appealed to Referee (S. 101 and 106-2)

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.

Idem

7(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.

- Three parties may request a Benefit Cost statement: Local municipality, OMAFRA, initiating Mun.
- Minister’s right to request B/C statement delegated to Director
- NOTE: Party requesting must pay for B/C statement
- B/C statement is defined in S. 1

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 provided for under this Act.

Where engineer is a corporation, etc.

8(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.

- “Engineer” defined in S. 1
- Council appoints engineer by by-law or resolution. Required for authority to enter onto private land. See S. 12(1)
- These are items that MUST be included in the engineer’s report.
- Engineer must specify the individual responsible for the project.

Appeal or referral to Tribunal

8(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

8(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.

- Minister’s right to refer to Tribunal delegated to the Director
- Tribunal decision is final (S. 101)

Notice

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

9(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.

Idem

9(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.

Report of engineer

9(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.

Fees to form part of costs

9(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.

- Responsibility of Clerk.

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**.

Consideration of report

10(2) Upon the filing of the preliminary report, the **council** of the initiating municipality shall cause the **clerk** to send a copy of the preliminary report and a notice of the date of the **council** meeting at which the preliminary report will be considered, to,
(a) every **owner** of land within the area requiring drainage as determined by the **engineer** or described in the petition, as the case may be;

- In most cases, a preliminary report is optional.
- It is Council’s option to order the preparation of a preliminary report.
- This section contains a description of Preliminary Report.
- No detailed surveying, no assessment schedule.
- Only required to send report and invitation to meeting to owners in area requiring drainage. However, consider sending it to all owners in the watershed.

- (b) any public utility or road authority that may be affected by the drainage works;
- (c) any local municipality and **conservation authority** entitled to notice under section 5 or, if no authority is entitled to notice, to the **Minister of Natural Resources**; and
- (d) the **Minister**.

Withdrawal from and additions to petition

10(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

10(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.

Instruction to engineer

10(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.

Appeal to Tribunal

10(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).

Idem

10(7) Where any party mentioned in clause (2) (a), (b) or (c) 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).

Referral to Tribunal

10(8) Where,

(a) lands used for agricultural purposes are included in the area to be drained, the **Minister**; or

(b) a **conservation authority** or regional office of the Ministry of **Natural Resources** reports to the **Minister of Natural Resources** that the environmental appraisal is unsatisfactory, the **Minister of Natural Resources**,

may refer the environmental appraisal to the **Tribunal**.

R.S.O. 1990, c. D.17, s. 10 (8); 2006, c. 19, Sched. A, s. 6 (1).

Powers of Tribunal

10(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).

- Decision point for landowners in the area requiring drainage.
- If a petition fails after the preliminary report stage, the original petitioners are eligible for a grant – S. 85(c) – See also ADIP policies for specific instructions.
- At council’s discretion, but decision is subject to appeal.
- Tribunal decision is final (S. 101)
- Minister’s authority to refer to the Tribunal delegated to the Director

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.

- Engineer must be fair and impartial.

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.

Offence, obstruction of engineer

12(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.

- Engineer's power to enter onto lands – this stresses the importance of the engineer's appointment by by-law or resolution.
- See also 63(1) and 95(3)

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.

Offence, interference with bench marks

13(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.

- Benchmarks are legally required – for future maintenance purposes, superintendents should be involved in establishing their location.
- Damages – Refer to Sec. 82

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.

Covered drainage works may be employed

14(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.

- This section is a connection to “Common Law”

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.

- “Sufficient outlet” defined in S. 1
- Connection to “Common Law”.

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.

- This is a requirement – what is specified is used also for future maintenance and repair.

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.

- Definition of “road authority” located in Sec. 1
- Cross-reference with S. 26 and 69.

<p><u>Construction of bridges, etc.</u> 18. Subject to section 33, the engineer in the report <u>shall</u> 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 <u>shall</u>, for the purposes of maintenance or repair, be deemed part of the drainage works. R.S.O. 1990, c. D.17, s. 18.</p>	<ul style="list-style-type: none"> • Caution: The pre-1975 <i>Drainage Act</i> indicates that the municipality is not responsible for future maintenance of farm crossings put in as part of the drain unless the engineer specified otherwise in the report. For maintenance/repair, it is very important to check the report.
<p><u>Engineer may recommend abandonment of drain</u> 19. The engineer in the report <u>may</u> 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.</p>	<ul style="list-style-type: none"> • When a new drain is replacing an old drain, this is important to do. • See also S. 84.
<p><u>Continuing drainage works beyond limits of municipality</u> 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 <u>may</u> 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. <u>Where drainage works not deemed outside initiating municipality</u> 20(2) A drainage works <u>shall not</u> 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.</p>	
ASSESSMENTS	
<p><u>Engineer to distinguish assessments</u> 21. The engineer in the report <u>shall</u> assess for benefit, outlet liability and injuring liability, and <u>shall</u> 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.</p>	<ul style="list-style-type: none"> • “Benefit”, “outlet liability” and “injuring liability” defined in S. 1 • See Factsheet “Understanding Drainage Assessment • See also the paper on “Drainage Assessment Revisited” on the Land Drainage Committee website.
<p><u>Assessment for benefit</u> 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 <u>may</u> be assessed for benefit. R.S.O. 1990, c. D.17, s. 22.</p>	<ul style="list-style-type: none"> • “Benefit” defined in S. 1
<p><u>Outlet liability, lands assessed for</u> 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, <u>may</u> be assessed for outlet liability. <u>Injuring liability, lands assessed for</u> 23(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 <u>may</u> be assessed for injuring liability with respect to a drainage works to relieve the injury so caused to such other land or road. <u>Basis of assessment</u> 23(3) The assessment for outlet liability and injuring liability provided for in subsections (1) and (2) <u>shall</u> be <u>based upon the volume and rate of flow of the water artificially caused to flow</u> upon the injured land or road or into the drainage works from the lands and roads liable for such assessments. <u>Certain owners not to count for or against petition</u> 23(4) The owners of the lands and roads made liable to assessment only under subsection (1) or (2) <u>shall</u> 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.</p>	<ul style="list-style-type: none"> • “Outlet Liability” defined in S. 1 • Connection to “Common Law” • “Injuring Liab.” defined in S. 1 • Connection to “Common Law” • The highlighted section is instructions to the engineer on how to calculate outlet and injuring liability assessments. • Owners assessed outlet and injuring liability do not dictate whether or not the project proceeds.

<p><u>Assessment for special benefit</u> 24. The engineer <u>may</u> 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.</p>	<ul style="list-style-type: none"> • “Special Benefit” defined in S. 1
<p><u>Engineer may assess a block, etc.</u> 25(1) The council of the local municipality <u>may</u> direct the engineer to assess as a block, a built-up area designated by the council, and the sum assessed therefor <u>may</u> be levied against all the rateable properties in the designated area proportionately on the basis of the assessed value of the land and buildings. <u>Assessment to be charged against public roads</u> 25(2) Where the engineer makes a block assessment under subsection (1), the engineer <u>shall</u> 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.</p>	<ul style="list-style-type: none"> • “Built up area” defined in S.1 • Can significantly reduce the engineer’s work, but the engineer must be instructed to do so by Council.
<p><u>Increased cost, how borne</u> 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 <u>shall</u> be assessed for and <u>shall</u> 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.</p>	<ul style="list-style-type: none"> • See paper “Section 26 of the <i>Drainage Act</i>” on website of the Land Drainage Committee. • Refer also to S. 17 and 69. • This item should be tendered separately since <u>actual</u> increased cost is assessed to road or utility.
<p><u>Assessment where drainage works continued beyond limits of municipality</u> 27. Where a drainage works is continued into or through a municipality other than the initiating municipality under section 20, the engineer <u>may</u> 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 <u>shall</u> 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.</p>	
<p><u>Assessing lands in neighbouring municipality</u> 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 <u>may</u> 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.</p>	
<p>ALLOWANCES AND COMPENSATION</p>	
<p><u>Allowances for right of way, etc.</u> 29. The engineer in the report <u>shall</u> 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 <u>shall</u> 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.</p>	<ul style="list-style-type: none"> • See paper “Allowances and Compensation Under the <i>Drainage Act</i>” on the Land Drainage Committee website. • See S. 63 for reference to “Working Space”
<p><u>Amount for damage to ornamental trees, etc.</u> 30. The engineer <u>shall</u> 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 <u>disposal of material</u> removed from a drainage works and <u>shall</u> 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.</p>	<ul style="list-style-type: none"> • Uncertain if damages are allowed when there is no disposal of material. E.g. tile municipal drain

<p><u>Allowance for existing drains</u> 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 <u>shall</u> 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 <u>shall</u> 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.</p>	
<p><u>Allowance for damage due to insufficient outlet</u> 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 <u>may</u> include in the estimate of cost a sufficient sum to compensate the owners of such low-lying lands for any injuries they <u>may</u> sustain from the drainage works, and in the report the engineer <u>shall</u> 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.</p>	<ul style="list-style-type: none"> • S. 15: Must be brought to a sufficient outlet. • S. 68 – This allowance must be registered
<p><u>Allowance for loss of access</u> 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 <u>shall</u> in the report provide for payment to the owner of such amount as appears just by way of allowance for loss of access and <u>shall</u> 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.</p>	<ul style="list-style-type: none"> • Refer to S. 18 where engineer is to provide for crossings. • S. 68 – allowance must be registered.
<p><u>Prior assessments to be taken into consideration</u> 34. In fixing the sum to be assessed upon any land or road, the engineer <u>may</u> 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 <u>shall</u> state the adjustment so made. R.S.O. 1990, c. D.17, s. 34.</p>	
<p><u>Assessment may be shown in money</u> 35. The assessment upon any land or road for a drainage works <u>shall</u> 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.</p>	
<p><u>Assessment of affected land</u> 36. The engineer, in assessing the lands and roads requiring drainage or otherwise liable for assessment under this Act, <u>shall</u> 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.</p>	
<p><u>Engineer to assess separately</u> 37. The engineer in the report <u>shall</u> list separately the lands in each municipality that are assessed for a drainage works and <u>shall</u> 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.</p>	<ul style="list-style-type: none"> • Lateral drains defined in Sec. 1. • Lateral drains are not eligible for grant (Sec. 86).
<p><u>Variation in assessments for maintenance and repair</u> 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 <u>shall</u> determine and report the basis upon which the cost of maintenance and repair of the drainage works or of any part or parts thereof <u>shall</u> be assessed. R.S.O. 1990, c. D.17, s. 38.</p>	<ul style="list-style-type: none"> • Engineer may produce a separate assessment schedule for maintenance. • Ask for the assessment schedule to be provided in a spreadsheet

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

39(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**.

By-law not invalid by reason report not filed

39(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.

- Extended to 12 months in 2010. Still may be difficult to complete some reports within this time period due to complexity of projects.

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. RSO. 1990, c. D.17, s. 40; 2010, c. 16, Sched. 1, s. 2 (8).

- Appeal referred to here is authorized under S. 48(1d)
- S. 85 does not allow the payment of grant activities under an engineers report in S. 40.

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 thirty days of the filing of the report, cause the **clerk** of the initiating municipality to send a copy of the report and a notice 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 at which the report will be considered,

to

- (d) the **owners**, in the initiating municipality, as shown by the last revised assessment roll to be the **owners** of lands and roads assessed for the drainage works or for which compensation or other allowances have been provided in the report;
- (e) 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;
- (f) the secretary-treasurer of each **conservation authority** that has jurisdiction over any land affected by the report;
- (g) any railway company, public utility or road authority affected by the report, other than by way of assessment;
- (h) the **Minister of Natural Resources** where land under his or her jurisdiction may be affected by the report; and
- (i) the **Director**.

R.S.O. 1990, c. D.17, s. 41 (1); 2010, c. 16, Sched. 1, s. 2 (9).

Clerk to notify persons assessed

41(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. RSO. 1990, c. D.17, s. 41 (2); 2010, c. 16, Sched. 1, s. 2 (10)

- Clerk's responsibility
- Now all landowners in watershed are notified.
- Time Line chart in manual.

<p><u>Copy of report not required</u> 41(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 (1-3).</p> <p><u>Same</u> 41(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).</p> <p><u>Council meeting for consideration of report</u> 41(4) The date of the council meeting at which the report will be considered <u>shall not</u> 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).</p> <p><u>By-law not to be quashed</u> 41(5) A by-law passed by the council of any local municipality in connection with the construction of a drainage works under this Act <u>shall not</u> 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 (4, 5).</p>	<ul style="list-style-type: none"> • A copy of the report does not have to be sent to each landowner. • This subsection was added in 1998. • Missing the time limit is not grounds for quashing by-law.
<p><u>Consideration of report</u> 42. The council of the initiating municipality at the meeting mentioned in section 41 <u>shall</u> consider the report, and, where the drainage works is requested on petition, <u>shall</u> give an opportunity to any person who has signed the petition to withdraw from it by filing a signed withdrawal with the clerk and <u>shall</u> 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 <u>may</u> 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).</p>	<ul style="list-style-type: none"> • Council considers report. • Final decision point for landowners in the area requiring drainage (except S. 59) • At this meeting, it is advisable to discuss the need to debenture the cost of the project.
<p><u>Liability of original petitioners</u> 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 <u>shall</u> be entered upon the collector's roll for the municipality against the lands of the person liable, and <u>shall</u> be collected in the same manner as real property taxes. R.S.O. 1990, c. D.17, s. 43.</p>	<ul style="list-style-type: none"> • S. 85 does not allow the payment of grant for reports that fail at this stage.
<p><u>Sufficiency of petition</u> 44. If, at the end of such council meeting, the petition contains a sufficient number of names to comply with section 4, the council <u>may</u> proceed to adopt the report, and, subject to section 59, no person having signed the petition <u>shall</u>, after the adoption of the report, be permitted to withdraw. R.S.O. 1990, c. D.17, s. 44.</p>	<ul style="list-style-type: none"> • Note the word “may”. However, if they don’t proceed, council has no ability to recover costs incurred to date.
<p><u>Adoption of report</u> 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 <u>shall</u> be considered to be adopted and the by-law <u>shall</u> be known as a provisional by-law. 2010, c. 16, Sched. 1, s. 2 (13).</p> <p><u>Appeal or referral to Tribunal</u> 45(2) Where a report is not adopted by council, any petitioner <u>may</u> appeal to the Tribunal or, where lands used for agricultural purposes are included in the area to be drained, the Minister <u>may</u> refer the matter to the Tribunal. R.S.O. 1990, c. D.17, s. 45 (2); 2006, c. 19, Sched. A, s. 6 (1).</p>	<ul style="list-style-type: none"> • Provisional By-law • Trib. decision may be appealed to Referee (S. 101 and 106-2) • Minister’s authority to refer to the Tribunal delegated to the Director

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

46(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

46(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).

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

47(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.

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

48(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).

- All involved parties get a copy of the provisional by-law and notice of the Court of Revision.
- Refer to Time Line chart in Tab 2.

- See Factsheet "Drainage Act Appeals"
- Appeal to Referee – LEGAL
- Refer to Regulation 275

- Although not specific, "road authority" also has appeal right
- Tribunal generally deals with technical issues that result from a new engineer's report
- Refer to Tribunal documents in Drainage Manual, Tab 5
- Composition and authority of Tribunal is covered in S. 98
- Tribunal's decision is final S. 101
- Appeal in S. 48(1d) is from a report filed under S. 40

<p><u>Appeal by conservation authority</u></p> <p>49. Where the proposed drainage works is to be undertaken within a watershed in which a conservation authority has jurisdiction, the authority <u>may</u> 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 <i>Conservation Authorities Act</i>, and in every case a notice of appeal <u>shall</u> 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).</p>	<ul style="list-style-type: none"> • Tribunal’s decision is final S. 101
<p><u>Appeal by municipality</u></p> <p>50(1) The council of any local municipality to which a copy of a provisional by-law was sent under subsection 46 (1) <u>may</u>, 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. RSO 1990, c. D.17, s.50(1); 2006, c. 19, Sched. A, s.6(1); 2010, c. 16, Sched. 1, s.2(20)</p> <p><u>Reasons for appeal</u></p> <p>50(2) The reasons for appeal <u>may</u> be the following, or any of them,</p> <ul style="list-style-type: none"> (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. <p>R.S.O. 1990, c. D.17, s. 50.</p>	<ul style="list-style-type: none"> • Other municipalities may also appeal. • Tribunal’s decision is final S. 101
<p><u>Powers of Tribunal</u></p> <p>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, <u>may</u> 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).</p> <p><u>Parties</u></p> <p>51(2) The parties to an appeal or reference to the Tribunal under this Act <u>shall</u> 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).</p>	<ul style="list-style-type: none"> • General powers of Tribunal.
<p><u>Appeals</u></p> <p>52(1) An owner of land assessed for the drainage works <u>may</u> appeal to the court of revision on any of the following grounds:</p> <ol style="list-style-type: none"> 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. <p>2010, c. 16, Sched. 1, s. 2 (21).</p> <p><u>Notice of appeal</u></p> <p>(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).</p> <p><u>Hearing of appeal</u></p> <p>(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).</p>	<ul style="list-style-type: none"> • Refer to Court of Revision Infosheet in Tab 9 • Appeal to Court of Revision – ASSESSMENTS • Composition of C.O.R. is covered in S. 97. • C.O.R. has no right to change the project itself, just adjust assessments. • C.O.R. can hear appeals of landowners who filed late.

<p><u>Discretion of court of revision</u></p> <p>(4) If notice of appeal is not sent in accordance with subsection (2), the court of revision <u>may</u>, 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.</p> <p style="text-align: right;">2010, c. 16, Sched. 1, s. 2 (21).</p>	
<p><u>Adjournment of court or Tribunal</u></p> <p>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 <u>shall</u> adjourn the hearing of the appeal for a time sufficient to enable the clerk to notify such persons as the appellant <u>may</u> 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 <u>shall</u> so notify all such persons, and at such adjourned hearing the court or Tribunal <u>shall</u> dispose of the matter of appeal and, where appropriate, redistribute the assessments in such manner as appears just.</p> <p>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).</p>	
<p><u>Appeal to Tribunal</u></p> <p>54(1) Any party to an appeal before the court of revision <u>may</u> 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.</p> <p style="text-align: right;">R.S.O. 1990, c. D.17, s. 54 (1); 2006, c. 19, Sched. A, s. 6 (1).</p> <p><u>Notice</u></p> <p>54(2) The clerk of the Tribunal <u>shall</u> give ten days notice to an appellant of the time and place of the hearing of the appeal by the Tribunal.</p> <p style="text-align: right;">R.S.O. 1990, c. D.17, s. 54 (2); 2006, c. 19, Sched. A, s. 6 (1).</p> <p><u>Procedure</u></p> <p>54(3) Every appeal <u>shall</u> be heard by the Tribunal by way of a new hearing and <u>shall</u> be disposed of by the Tribunal in such manner as it considers proper, and its decision is final.</p> <p style="text-align: right;">R.S.O. 1990, c. D.17, s. 54 (3); 2006, c. 19, Sched. A, s. 6 (6).</p>	<ul style="list-style-type: none"> • Appeal to Tribunal from the decision of the Court of Revision • Tribunal decision is final (S. 101)
<p><u>Evidence by engineer</u></p> <p>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 <u>shall</u> give evidence before the appellant's case is presented.</p> <p style="text-align: right;">R.S.O. 1990, c. D.17, s. 55; 2006, c. 19, Sched. A, s. 6 (1).</p>	
<p><u>Clerk to alter assessments</u></p> <p>56. Any change in an assessment made by the court of revision or by the Tribunal <u>shall</u> 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 <u>shall</u>, before the passing thereof, be amended to carry out any changes so made by the court of revision or by the Tribunal.</p> <p style="text-align: right;">R.S.O. 1990, c. D.17, s. 56; 2006, c. 19, Sched. A, s. 6 (1).</p>	<ul style="list-style-type: none"> • Clerk makes changes to assessment schedule – the engineer may provide this update. • Request electronic copy of report and assessment schedule.
<p><u>Referral back to engineer</u></p> <p>57. The council of the initiating municipality, at any time before passing the by-law, if it appears that there are or <u>may</u> be errors in the report of the engineer or that for any other reason the report should be reconsidered, <u>may</u> refer the report back to the engineer for reconsideration, and the engineer <u>shall</u> thereupon reconsider the report and <u>shall</u> further report to the council, which report has the same effect and <u>shall</u> be dealt with in the same manner and the proceedings thereon <u>shall</u> be the same as upon the original report.</p> <p style="text-align: right;">R.S.O. 1990, c. D.17, s. 57.</p>	

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

58(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**.

Repeal of by-law

58(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.

Where error in report

58(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).

Appeal to Tribunal

58(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).

- This is where third reading is given to the by-law provisionally adopted in Section 45(1)
- Construction shouldn't start until 10 days have passed after the by-law has been given third reading. Can use this time to tender the project.
- By-law can be repealed, but the municipality has to pay costs.
- Last opportunity to make a change to the project.
- Trib. decision maybe appealed to Referee (S. 101 and 106-2)
- Minister's authority to refer to the Tribunal delegated to the Director

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.

Council may proceed with construction

59(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.

- Final decision point for landowners in the area requiring drainage.

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).

- "Or drainage superintendent" – Superintendents should be very careful about certifying the completion of a construction project. If something goes wrong, who assumes liability?

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.

- Authority to debenture projects.

Commutation of special assessment

61(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.

Assessments of \$50 or less

61(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.

Application of Municipal Act

61(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

61(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

61(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).

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.

When lands and roads in another municipality assessable

62(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).

- 61(4) Sec. 2.1 of *Municipal Act*: “If, under this or any other Act, an amount is given priority lien status, the amount may be added to the tax roll against the property in respect of which the amount was imposed or against any other property in respect of which the amount was authorized to be added by this or any other Act.”
- Land exempt from property taxes is still assessable under the *Drainage Act*.
- 61(6) – defines who pays assessments imposed on lands exempt from taxation.

- Sample by-law in Manual at the end of Tab 2.

- Trib. decision maybe appealed to Referee (S. 101 and 106-2)

Responsibility of owner for payment

62(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.

Payment of balance

62(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.

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.

Penalty for obstruction

63(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.

- Contractor has authority to enter onto land.
- Working space must be defined in the engineer's report.

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.
RSO 1990, c. D.17, s. 64; 1998, c. 18, Sched. A, s. 1 (3); 2006, c. 19, Sched. A, s. 6 (1).

- Appeal on quality of construction.
- Tribunal decision is final (S. 101)

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.

Agreement on share of assessment

65(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).

Subsequent connection to drainage works, etc.

65(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.

DRAIN MANAGEMENT SECTION

- S. 65 & 66 were combined in 2010 through Bill 68
- S. 85 does not allow the payment of grant activities under an engineers report in S. 65.
- Reapportioning assessments due to severances by
 - by engineer in ss. 1
 - By agreement in ss. 2
- Ss 3 - Adjusting assessments due to subsequent connections to drain or land use changes

Subsequent disconnection from drainage works

65(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.

Restriction on connection or disconnection

65(5) No person **shall** connect to or disconnect from drainage works without the approval of the **council** of the municipality.

Notice of instructions

65(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.

Engineer's assessment

65(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.

Notice of assessment

65(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.

Assessment binding

65(9) Subject to subsection (11), the **engineer's** assessment is binding on the assessed land.

Costs

65(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.

Appeal of assessment

65(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**.

Use of amount collected

65(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).

- Ss. 4 – Adjusting assessments due to disconnection of land from the watershed
- Ss. 5 – council approval is require to connect or disconnect
- Ss. 6-11 – Engineer's reassessment process
- Tribunal decision is final on appeals under this section (S. 101)

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

- In 2010, Sec. 66 was combined with S. 65; former S.66 repealed.

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.

- Refer to allowances provided under S. 32 and 33.

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.

Non-exercise by public utility or road authority

69(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.

- Definition of “road authority” and “public utility” located in Sec. 1
- Cross-reference with S.s 26 and 17.

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

72(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

72(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.

- Landowners do not have the right to appeal the engineer’s costs; however, landowners can lobby council to appeal engineer’s cost.
- Tribunal decision maybe appealed to Referee (S. 101 and 106-2)

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.

Cost of council meetings

73(2) The cost of **council** meetings and special **council** meetings shall not be included in the cost of the drainage works.

Fees of clerk

73(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.

- Additional costs that can be included in the cost of a drainage project.
- Refer to Section 1.1 of ADIP policies (Tab 3 of the Drainage Manual)

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

75(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.

When levy for maintenance required

75(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 sections 65 and 66 of the *Ontario Municipal Board Act* do not apply.

R.S.O. 1990, c. D.17, s. 75.

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. RSO 1990, c. D.17, s.76(1); 2006, c.19, Sched. A, s.6(1).

Proceedings on report of engineer

76(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.

Appeal from report of engineer

76(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).

DRAIN MANAGEMENT SECTION

- S. 74 projects are eligible for grants – S. 85(a)(ii)
- “Maintenance” and “repair” are defined in S. 1
- Municipality responsibility:
 - within limits of municipality
 - at expense of upstream lands...
 - by current assessment schedule
- No allowances paid for maint.
- No right of appeal on assessment
- No requirement for notification

DRAIN MANAGEMENT SECTION

- Refer to paper in Manual on assessing maintenance and repairs.
 - Authorizing by-law only required when another municipality is involved.
 - Levying by-law required for all maintenance/repair projects
- Tribunal decision is final (S. 101)

- Sec. 75(3) allows municipality to accumulate small amounts of maintenance costs over time
- **Caution:** Can be controversial:
 - change in property ownership
 - Forget to levy costs longer than five years.
 - Accumulation of interest

DRAIN MANAGEMENT SECTION

- S. 85 does not allow the payment of grant activities under an engineer’s report in S. 76.
- Developing a new assessment schedule.

Appeal from assessment

76(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.

Basis of future assessments

76(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.

Deepening, widening or extending without report of engineer

77(1) The **council** of any local municipality whose duty it is to maintain and repair a drainage works for which only lands and roads within or under the jurisdiction of the municipality are assessed may, after the completion of the drainage works, without the report of an **engineer**, upon a proportional assessment on the lands and roads as last assessed for the construction, maintenance or repair of the drainage works, make improvements thereto by deepening, widening or extending the drainage works to an outlet, provided the cost of such deepening, widening or extending is not more than \$4,500, but the amount expended may be increased to 20 per cent of the initial cost of the drainage works upon receiving approval as set out in the requirements for a petition of those parties eligible to sign a petition under section 4.

Moving drainage works off road

77(2) Where any road authority desires to relocate a drainage works or part thereof that is on or adjacent to a road under its jurisdiction, upon the report of an **engineer** appointed by the municipality whose duty it is to maintain and repair the drainage works that the drainage works or part thereof can be moved to a specified new location without impairing the capacity or efficiency of such drainage works or adversely affecting any person or property, the **council** of a local municipality may authorize such relocation within the boundaries of the municipality at the expense of the road authority.

Written opinion in lieu of report

77(3) Where the relocation of a drainage works or part thereof referred to in subsection (2) is to be effected within the lands under the jurisdiction of the road authority, the **engineer** may prepare a written opinion instead of a report. R.S.O. 1990, c. D.17, s. 77.

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 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.

Projects

78(1.1) The 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. Otherwise improving, extending to an outlet or altering the drainage works.
6. Covering all or part of the drainage works.
7. Consolidating two or more drainage works.

2010, c. 16, Sched. 1, s. 2 (27).

Notice to conservation authority

78(2) An **engineer** shall not be appointed under subsection (1) until thirty days after a notice advising of the proposed drainage works has been sent to the **secretary-treasurer** of each **conservation authority** that has jurisdiction over any of the lands that would be affected. R.S.O. 1990, c. D.17, s. 78 (2); 2010, c. 16, Sched. 1, s. 2 (28).

DRAIN MANAGEMENT SECTION

- S. 77(1) projects are eligible for grants - S. 85(a)(ii)
- “Improvement” defined in S. 1
- Normally applied to watercourse immediately downstream of drain
- Caution re: use of this section:
 - No clear authority to enter onto downstream land
 - No ability to assess downstream landowner
 - No allowances
 - After work complete, is d/s section a municipal drain?
 - What if landowner refuses entry onto land?
 - Precedence set – may be asked to maintain d/s section again.

DRAIN MANAGEMENT SECTION

- S. 78 projects are eligible for grants – S. 85(a)(i)
- “Improvement” defined in S. 1
- When a Sec.78 report is not adopted, the Act does not specify who pays the outstanding eng. costs.
- Also notify MNR, OMAFRA and other involved mun. so they have the right to request an env. appraisal (Sec.6) or B/C statement (Sec. 7)
- After performing the above, the petition drain process beginning in Sec.8 should be used, excluding any details concerning the validity of petitions and the rights of petitioners.

Powers and duties of engineer

78(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.

Proceedings

78(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.

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. RSO1990,c.D.17,s.79(1); 2010,c.16, Sched.1,s.2(29)

Municipality liable for damages caused by non-repair

79(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.

No liability where drainage works blocked by ice or snow

79(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.

DRAIN MANAGEMENT SECTION

- Places potential liability on the responsible municipality
- Does not mean that work must be completed within 45 days, but the municipality must be actively working to complete any necessary work.
- While not liable for damages from snow or ice, if municipality becomes aware of damages to homes, should take measures to address the problem.

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. RSO 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

80(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).

DRAIN MANAGEMENT SECTION

- Must give the owner/occupant the first opportunity to remove the blockage. If owner/occup decides to do work, should be supervised by superintendent, after obtaining any necessary permits or authorizations.

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).

DRAIN MANAGEMENT SECTION

- Note, if superintendent performs work, costs should be charged to drain. Should not claim as part of superintendent grant.

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.

DRAIN MANAGEMENT SECTION

- Refer also to S. 106(1c), 111 and 118 for claims for damages

<p><u>Penalty for damage to drainage works</u> 82(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.</p>	<ul style="list-style-type: none"> • Refer also to S. 13 regarding damages to benchmarks
<p>83. Repealed: 2010, c. 16, Sched. 1, s. 2 (31).</p>	<ul style="list-style-type: none"> • Pollution restriction section no longer required (other legislation); repealed in 2010.
<p><u>Abandonment of all or part of drainage works</u> 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 <u>shall</u>, 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).</p> <p><u>Same</u> 84(2) The council of the initiating municipality <u>may</u> 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).</p> <p><u>Engineer’s report may be required</u> 84(3) If an owner sends a notice to the clerk within the 10-day period in accordance with subsection (1), the council <u>shall</u> 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 <u>shall</u> 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).</p> <p><u>Procedures on report</u> 84(4) All proceedings, including appeals, with respect to a report under subsection (1) <u>shall</u> be the same with necessary modifications as on a report for the construction of a drainage works.</p> <p><u>Abandonment by council</u> 84(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 <u>may</u> be altered on appeal, recommends the abandonment of the drainage works, the council <u>may</u> 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).</p> <p><u>Disbursement of remaining funds</u> 84(6) Any money remaining to the credit of the drainage works after it is abandoned <u>shall</u> be divided proportionately among the owners of lands and roads assessed therefor. R.S.O. 1990, c. D.17, s. 84.</p>	<p><u>DRAIN MANAGEMENT SECTION</u></p> <ul style="list-style-type: none"> • Three ways to abandon drains: <ul style="list-style-type: none"> - S. 84(1) – landowners - S. 84(2) – council - S. 19 – engineer

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).

- For details, review “Agricultural Drainage Infrastructure Program” (ADIP) policies in Tab 3 of Drainage Manual.
- Minister’s authority to establish a budget limit for municipalities delegated to the Director

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.

Exception

86(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.

- “lateral drains” defined in Sec. 1; not eligible for grant
- Assessments on government owned lands not eligible for grant

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 ⅓ 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 ⅔ 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

87(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 (1, 2).

Where drainage superintendents employed

87(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).

- Minister’s authority to pay grant delegated to the Director
- Initiating municipality applies for grants, even for maintenance.
- Minister’s authority to pay grant delegated to the Director
- Minister’s authority to approve qualifications and pay grant delegated to the Director
- To qualify for grants, must have satisfactory qualifications:
 - Drainage Superintendents Course
 - Surveying training
 - Appointed by by-law

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

88(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).

- Limits on interest charges for construction/improvement project
- No payment of grant on interest on maintenance.

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.

Grant to be applied to reduce assessments

89(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.

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.

- This applies to construction, improvement, maintenance or repair projects.

- Minister’s power to withhold or reduce grant delegated to Director

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.

- Clarence Haverson, Director

- Sid Vander Veen
- Andy Kester

DRAINAGE SUPERINTENDENT AND COMMISSIONERS

Appointment of drainage superintendent

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**.

Drainage superintendent may act for more than one municipality

93(2) Two or more municipalities may appoint the same person to be a drainage **superintendent** within each municipality.

Duties of drainage superintendent

93(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).

Remuneration

93(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).

- Appointment must be by by-law – important for entry onto land (see S. 95-3).
- Can now appoint more than one superintendent.
- Minister’s approval authority delegated to the Director
- Superintendent costs charged to the general funds of municipality.
- Superintendent costs are eligible for grants – S. 85(b) and 87(3)
- See ADIP policies for specific requirements.

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

- Commissioners section repealed in 2010; no longer served purpose

<p><u>Appointment of commissioner</u></p> <p>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 <u>may</u> by by-law,</p> <p>(a) appoint one or more commissioners with power to,</p> <p>(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</p> <p>(ii) do all other things necessary for successfully operating the drainage works and for keeping the embankment thereof in repair as <u>may</u> be set forth in the by-law appointing the commissioner or commissioners; and</p> <p>(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.</p> <p><u>Fees, etc.</u></p> <p>95(2) The fees or other remuneration of a commissioner <u>shall</u> form part of the cost of the maintenance and repair of the drainage works. R.S.O. 1990, c. D.17, s. 95 (1, 2).</p> <p><u>Powers</u></p> <p>95(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).</p>	<ul style="list-style-type: none"> • “Works” commissioner appointed to take care of pumping stations, dykes, water management structures, etc. • Cost of “Works” commissioner is assessed to the drain • Right of entry onto land.
<p><u>Offence</u></p> <p>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.</p>	
<p style="text-align: center;">COURTS OF REVISION</p> <p><u>Court of revision</u></p> <p>97(1) Subject to subsections (3), (4) and (5), a court of revision <u>shall</u> consist of three or five members appointed by the council of the initiating municipality and such members other than members of the council <u>may</u> be paid such remuneration and expenses as the council <u>may</u> by by-law provide.</p> <p><u>Qualification</u></p> <p>97(2) Every such member <u>shall</u> be a person eligible to be elected a member of council or <u>shall</u> be a member of council.</p> <p><u>Where more than one municipality</u></p> <p>97(3) Where the lands assessed for the drainage works extend from the initiating municipality into a neighbouring municipality, the court of revision <u>shall</u> consist of two members appointed by the council of the initiating municipality, of whom one <u>shall</u> be chair and one member appointed by the council of each of the neighbouring municipalities and the court <u>shall</u> hear and rule on appeals as if the entire area affected by the drainage works were in one municipality.</p> <p><u>Quorum</u></p> <p>97(4) A majority of the members of the court of revision <u>shall</u> constitute and, despite the decision of any court, <u>shall</u> be deemed always to have constituted a quorum.</p> <p><u>Jurisdiction and powers of quorum</u></p> <p>97(5) A quorum of the court of revision is sufficient and, despite the decision of any court, <u>shall</u> 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.</p>	<ul style="list-style-type: none"> • Refer to Court of Revision Infosheet in Tab 9 • Operation of the Court of Revision is governed by the <i>Statutory Powers Procedures Act</i>.
<p style="text-align: center;">POWERS OF TRIBUNAL</p> <p>98(1-3) Repealed: 1999, c. 12, Sched. A, s. 9 (3).</p> <p><u>Powers of Tribunal</u></p> <p>98(4) The Tribunal <u>may</u>,</p> <p>(a) hold sittings at any place in Ontario and in more than one place at the same time; and</p> <p>(b) procure reports from engineers and other professional persons in order to assist the Tribunal in reaching a decision.</p> <p>RSO 1990, c. D.17, s.98(4); 2006, c. 19, Sched. A, s.6(1); 2006, c. 19, Sched. A, s.6(9).</p>	<ul style="list-style-type: none"> • Now known as “Agriculture, Food and Rural Affairs Tribunal”. See definitions, S. 1 • Operation of the Tribunal is governed by the <i>Statutory Powers Procedures Act</i>.

98(5) Repealed: 1999, c. 12, Sched. A, s. 9 (3).

Clerk of Tribunal

98(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

98(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

98(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

98(9) The **Tribunal** shall send by registered mail addressed to the parties to any proceedings who took part in the hearing, at their addresses last known to the **Tribunal** and to the **Minister**, a copy of its final decision and order, if any, in the proceedings.
R.S.O. 1990, c. D.17, s. 98 (9); 2006, c. 19, Sched. A, s. 6 (1).

Costs, payment of

98(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

98(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).

- Tribunal quorum of 2 member is established by S. 14(6) and 14(6.1) of the *Ministry of Agriculture, Food and Rural Affairs Act*.
- Tribunal members and expenses are paid by Province.
- Hearings usually held in municipal office.
- May charge costs.

Appeal 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).

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).

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).

REFEREE

Appointment of referee

102(1) The Lieutenant Governor in **Council** may appoint a **referee** for the purposes of this Act.

Acting referee

102(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**.

Appointment of referee

102(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

102(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.

Referee not to practise under Act

102(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.

- Current Referee is Robert Waters
- Current Acting Referee is William Turville

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

103(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

103(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.

103(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.

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.

RSO 1990, c. D.17, s. 104 (1); 2001, c. 9, Sched. A, s. 1; 2010, c. 16, Sched. 1, s. 2 (36).

Acting clerk

104(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

104(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

104(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).

Sheriffs, etc., to assist referee

105. Sheriffs, deputy sheriffs, constables 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.

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.

- Powers of Referee

Jurisdiction of referee

106(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

106(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.

Determination of questions of fact or law

106(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.

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 under this Act and may prescribe tariffs and fees therefor.

Referee may give directions

107(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.

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.

<p><u>Costs in discretion of referee</u> 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.</p> <p><u>Tariff of costs</u> 110. In the absence of other provisions, the tariff of costs in any application or proceeding under this Act <u>shall</u> 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.</p>	
<p><u>Proceedings instituted by notice</u> 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 <u>shall</u> be instituted by serving ten clear days notice setting forth the grounds of the claim upon all persons concerned.</p> <p><u>Notice filed in Superior Court of Justice</u> 111(2) A copy of the notice with an affidavit of service thereof <u>shall</u> 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 <u>shall</u> 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.</p>	<ul style="list-style-type: none"> • Claims for damages
<p><u>Affidavits filed before motion</u> 112. All affidavits intended to be used in support of a motion <u>shall</u> 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.</p> <p><u>Extension of time for appeal</u> 113. The referee <u>may</u>, 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.</p>	
<p><u>When referee proceeds on view</u> 114. When the referee proceeds partly on view or on any special knowledge or skill possessed by him or her, he or she <u>shall</u> 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 <u>shall</u> 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.</p>	
<p><u>Clerk to forward notice of filing</u> 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, <u>shall</u> 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 <u>shall</u> 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).</p>	
<p><u>Copy of decision to be sent to Minister and municipality</u> 116. A copy of the decision certified by the referee or clerk of the court <u>shall</u> 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.</p>	
<p><u>Amendment of by-law</u> 117. The provisional by-law or the by-law of the initiating municipality and of any other municipality interested <u>shall</u> 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 <u>may</u> be. R.S.O. 1990, c. D.17, s. 117.</p>	

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.

Municipality in default to pay costs

118(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.

In cases of settlement

118(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).

Where extension of drainage works necessary

118(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.

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).

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.

Limitation

120(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.

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.

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.

Apportionment of cost

122(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.

Extension of drainage works from adjoining province

122(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.

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.

- Contact OMAFRA for guidelines for requesting an emergency designation.

Regulations

125. 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.

2010, c. 16, Sched. 1, s. 2 (39).