

# **DRAINAGE ACT NON-PAYMENT CASE STUDY**

I Missed the  
"Sign of the Gypsy Queen"



BURNSIDE

# Adoption of Report:

## ***Adoption of report***

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

## **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...



# Implementation:

## ***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.

## ***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.

# Version of the Drainage Act from 1962 - 1975:

## *Application of R.S.O. 1960*

40(5) The assessments and rates imposed under this Act shall be deemed to be taxes, and the provisions of The Assessment Act as to the collection and recovery of taxes, and the proceedings that may be taken in default of payment thereof, apply.

# Version of the Drainage Act from 1975 - 2002:

## *Application of R.S.O. 1970*

61(4) The assessments and rates imposed under this Act shall be deemed to be taxes, and the provisions of The Municipal Act as to the collection and recovery of taxes, and the proceedings that may be taken in default of payment thereof, apply.

# Current Version of the Drainage Act (post 2001):

## *Priority lien*

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.

# Municipal Act 2001:

## ***Amount added to tax roll***

1 (2.1) 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.

## ***Priority lien status***

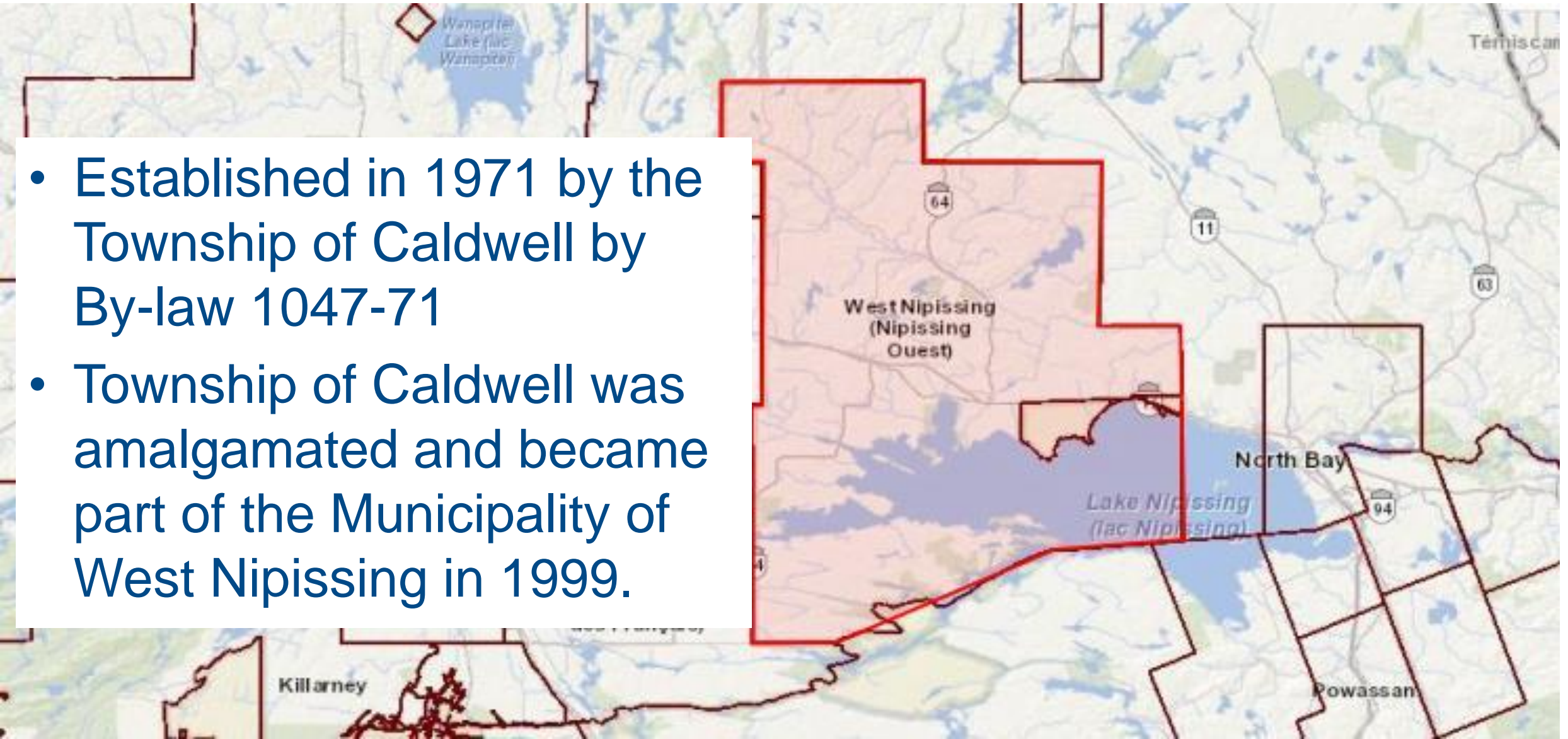
1 (3) If an amount is added to the tax roll in respect of a property under subsection (2.1) or (2.2), that amount, including interest, (a) may be collected in the same manner as taxes on the property;



# What Assessments and Rates?:

- S. 10(4): Cost of failed preliminary report
- S. 43: Cost of failed final report
- S. 61: Assessment of cost of project “shall by by-law impose upon the land assessed for the drainage works the assessment with which it is chargeable”
- S. 74: Maintenance/repair work
- S. 76: New assessment schedules
- S. 78(1): Major Drain Improvements (minor improvements?)
- 80(2): Cost of removing obstructions
- S. 118: Referee orders re: damages and costs

- Established in 1971 by the Township of Caldwell by By-law 1047-71
- Township of Caldwell was amalgamated and became part of the Municipality of West Nipissing in 1999.



# Cazabon Drain

- Some work was required on the Respondent's land
- Respondent (the property owner):
  - Originally allowed some work to be done
  - Unhappy with quality of work – blocked part of the drain
  - Refused the municipality entry onto land (access to the property restricted with an iron gate)
- Upstream owners wanted the drainage restored
- Municipality made application to the Referee

# Referee Hearing

- Municipality filed a motion – August 3, 2010
  - Referee wasn't satisfied that the Respondent (property owner) has been properly notified
  - Issued order that notice had to be sent by regular mail, registered mail and registered in the Land Registry office
- Case heard by Referee Turville on August 16, 2010
  - Respondent did not show up to the hearing
  - Referee proceeded anyway.

# Referee Hearing – August 16, 2010

- Garth Noecker gave evidence
  - Culvert on the Respondence property needed work
  - Respondent had also filled in the drain
  - Respondent refused the municipality entry onto land
  - Police were involved – no success
- Respondent statement:

"All of the drainage employees, administrative and otherwise, including the CAO, are now persona non grata on my property and they cannot lawfully enter upon my land under the pretext of working on the drain because the drain was abandoned and closed almost a year ago."

# Referee Hearing – August 16, 2010

- Referee found that the Respondent:
  - Failed to obtain legal advice
  - Refused municipal entry onto his land
  - Filled in a section of the Drain
  - Exposed himself to damages
  - Incorrectly concluded that the Drain was abandoned
  - Interfered with municipality's duty to maintain/repair the drain



# Referee Decision – August 27, 2010

- Referee ordered:
  - The municipality to immediately begin repair/maintenance
  - Engage the West Nipissing Police Services
  - A permanent injunction granted to the Municipality against the Respondent to restrain access
  - Respondent must pay costs of \$1000
- Work was completed under police supervision

# Costs levied...



Respondent  
refused to pay...

# Municipality made use of Section 61(4) of the Drainage Act

Property put up  
for tax sale...

# Property sold...

Respondent  
refused to leave...



CBC News  
July 19, 2017

[www.cbc.ca/news/canada/sudbury/verner-standoff-ended-1.4211832](http://www.cbc.ca/news/canada/sudbury/verner-standoff-ended-1.4211832)

Sudbury

## 2 people in custody after 28-hour standoff in Verner

West Nipissing police say one person detained by Canada Border Services Agency

CBC News · Posted: Jul 19, 2017 8:05 AM EDT | Last Updated: July 19, 2017



Two people are in custody following a standoff in Verner, Ont. Tuesday. (Frederic Projean/Radio-Canada)

<https://www.sudbury.com/police/verner-standoff-has-long-bizarre-history-674161>

## Verner standoff has long, bizarre history

Man at centre of dispute wrote hit song for April Wine; once sued government for \$28M

Darren MacDonald

Jul 18, 2017 9:37 PM

Updated Jul 25, 2017 10:00 AM



The standoff between a man and police in Verner came to an end around 5 p.m. Tuesday, West Nipissing Police said late Tuesday. (File)



# Sudbury News

July 18, 2017

The standoff between a man and police in Verner came to an end around 5 p.m., West Nipissing Police said late Tuesday.

Two people have been arrested, a man and a woman. The man faces charges of possessing a weapon dangerous to the public peace, careless use of a firearm and unsafe storage of a firearm.

The woman, believed to be an American, is being held on a warrant issued by the Canada Border Services Agency.

While police have not released any names, the home is owned by Lorence William Hud, a 70-year-old musician best known for penning the April Wine hit, "Sign of the Gypsy Queen." It's not known how long Hud has owned the home, but his problems with authorities began 2007 and have escalated since.



CBC News

March 6, 2023

[www.cbc.ca/news/canada/sudbury/lorence-hud-legal-battle-west-nipissing-1.6766771](http://www.cbc.ca/news/canada/sudbury/lorence-hud-legal-battle-west-nipissing-1.6766771)

# The long, strange legal battle between a northern Ontario town and the composer of Sign of the Gypsy Queen

Legal fight has included armed stand-off with police and alleged harassing phone calls from the prime minister



[Erik White](#) · CBC News · Posted: Mar 06, 2023 6:00 AM EST | Last Updated: March 6, 2023



The writer of a classic Canadian rock song has lost his latest in a long string of legal battles with the municipality of West Nipissing.

Lorence Hud first released *Sign of the Gypsy Queen* in 1972 and it later became a big hit for Canadian rock band April Wine in 1981.

Last week, the Supreme Court of Canada turned down his latest attempt to sue the northern Ontario town, its police board and a long list of others over the seizure of his rural home south of Verner.

[Court records](#) show Hud bought the property off Highway 64 in 2003 and moved there with his sister. In April 2007, he wrote to West Nipissing town staff complaining that a nearby municipal drain was not being kept clear of debris and was becoming a "magnet to attract beavers."

Just a few days after he sent that letter, the road to his property caved in. Hud's neighbours complained, but the court heard that he refused to allow town staff onto his land to make the necessary repairs.

## CBC News: March 6, 2023

In 2010, the municipality received a "permanent injunction" from a public official known as a drainage referee allowing town staff to go onto the property, describing Hud as "very obstinate," "unreasonable" and "ruled by his own selfish agenda."

The drainage referee also ordered that the town's legal costs of \$1,000 be added to Hud's property tax bill, along with the \$14,000 it cost to repair the culvert.

Hud tried to sue West Nipissing in 2011, but his motion was dismissed and he was ordered to pay the town another \$4,000 in legal fees.

In 2014, he sued the Attorney General of Canada, seeking \$28 million in damages.

## CBC News: March 6, 2023

Court documents show Hud had tried to "convince the Prime Minister of Canada and the Minister of Justice to intervene and quash what he calls the illegal courts," but neither politician would meet with him.

He also claimed the prime minister was responsible for numerous harassing phone calls he was receiving at the time.

Hud told to the court that the "illegal bill" that had been added to his property taxes violated his constitutional rights, affected his mother's health and "extinguished his desire to write music."

The judge described his arguments as "confusing" and "unreasonable" and dismissed the case, ordering him to pay \$300 to the federal government for legal costs.

## CBC News: March 6, 2023

In 2015, Hud asked the Supreme Court of Canada to overrule that decision, but it refused to hear his case.

By 2017, the unpaid repair bill he owed the municipality of West Nipissing had grown to over \$39,000. The town put the property up for tax sale and it was purchased by a numbered company for \$180,000.

Court records show that when told of the sale, Hud "reacted violently" and armed himself with a pistol. West Nipissing staff say following a 30-hour stand-off with police, he was arrested and charged with a crime.

He went to a court later that year to get an injunction giving him "immediate exclusive possession of the property," but was turned down.

Hud then filed a lawsuit against the Municipality of West Nipissing, the local police board, the new owners of his home and a long list of others, but it was dismissed by the court in 2021, along with an order that he pay \$5,000 to his opponents for their legal expenses.

Last week, Hud petitioned the Supreme Court to hear his appeal and possibly overturn that decision, but it was dismissed and he was once again ordered to pay the costs of those he was taking to court.

# Government secret drain tax court Cover-up

<https://www.youtube.com/watch?v=g14nqsPaaCw>



# Key takeaways:

- Don't cut corners on your by-laws
- Don't deviate too much from the prescribed form
- Communicate
- Document
- When things look like they are going to go sideways, consult with senior staff within your municipality – keep them informed.

# Questions?



Sid Vander Veen, P. Eng.  
R. J. Burnside & Associates Limited  
[sid.vanderveen@rjburnside.com](mailto:sid.vanderveen@rjburnside.com)  
226-314-2131