



Overview of the Drainage Act –

March 7, 2020

Surface Water under Common Law:



- No right of drainage
- No liability for natural flow of surface water, but lower owner does not have to accept the water; can protect their property (e.g. berms or dykes)
- If collected and discharged onto an adjoining property, then potential liability.



Tools to Solve Drainage Issues

Drainage Act was passed to provide property owners with a process to solve drainage problems.



Petition Drains

*S. 4: Process Resulting in
a new Municipal Drain*

Petition (or Municipal) Drains

- All new drains must be initiated by Petition:
- Petition is a legal document that triggers the Drainage Act process.
- Petitioners become financially responsible as soon as the petition is signed and submitted

Validity of Petition

- Inside the watershed is an internal “area requiring drainage” (ARD)
- To be a valid petition, it must meet one of the following criteria: Signed by:
 - The majority of owners in the ARD
 - The owners that represent at least 60% of the ARD
 - The road authority, where the road needs drainage
 - The Director, where agricultural land is involved.

Next Steps:

- Council considers petition:
 - Council may reject a petition (can be appealed)
- Council does not decide if petition is valid.
- Petition is circulated to CA's & MNRF for comment (also include Fisheries & Oceans)
- Agencies may request an environmental appraisal

Appointment of Engineer

(applies to Petition Drains & S. 78 Improvement Project)

- Council appoints independent engineer (S.8)
 - Engineer must be fair and impartial (S.11)
 - Must represent the community of owners
- Appointment by by-law or resolution (S.8)
 - Appointed engineer has right of entry onto private property (S.12)
- Working with the engineer, the clerk sends notice of an “on-site meeting”

On-Site Meeting



Engineer's Responsibilities:

- Determine validity of petition
- Determine the needs & concerns of property owners and agencies

Final Report

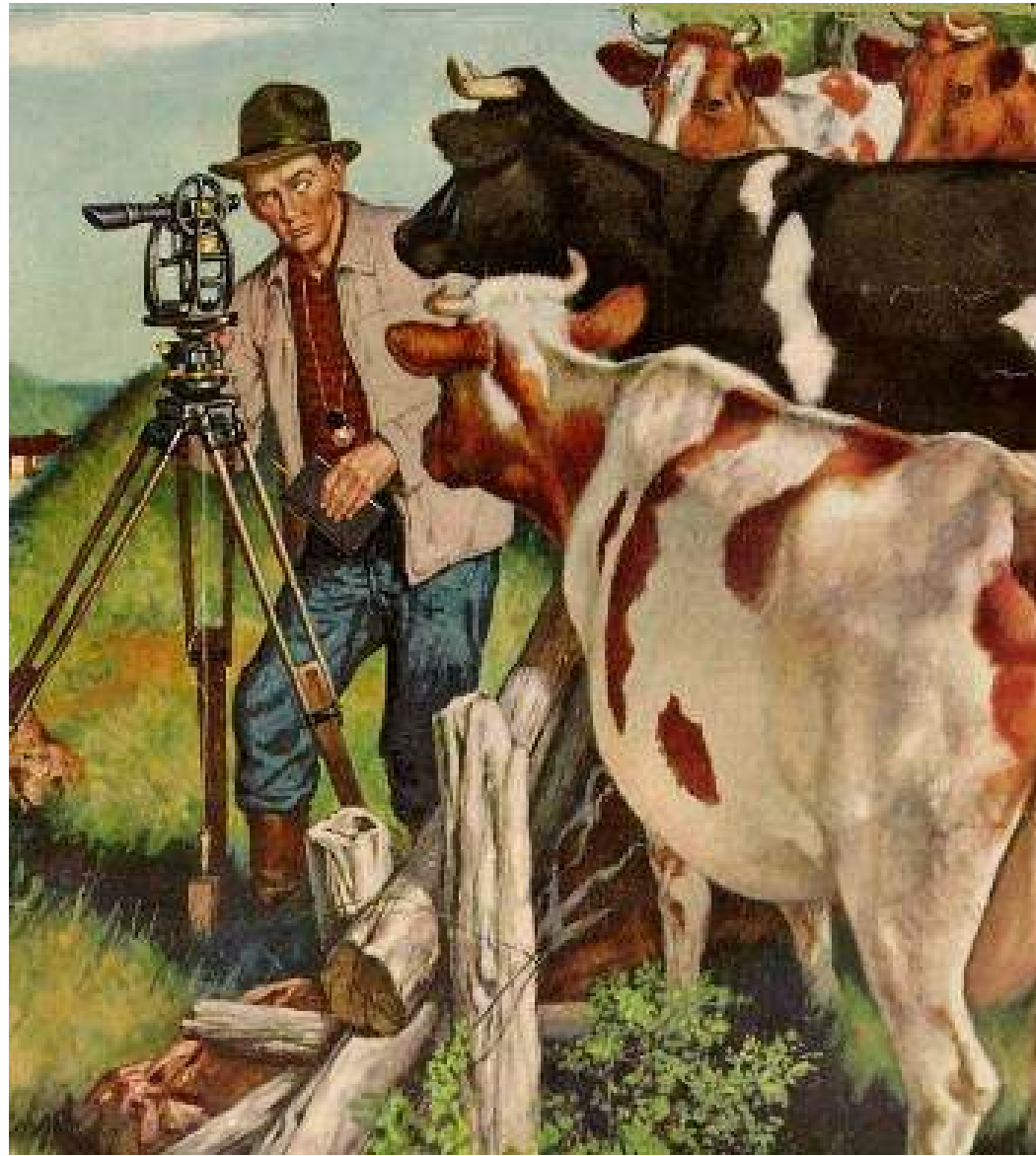
(applies to Petition Drains)

- Final Report must include:
 - ✓ Plans, profiles, specifications
 - ✓ Description of the area requiring drainage
 - ✓ Total cost estimate
 - ✓ Assessment schedule (how costs are divided)
 - ✓ Allowances (compensation)
 - ✓ Benchmarks, specifics on material disposal, crossings, working space
- Must consider individual property owner needs
- Must obtain necessary permits/approvals
- Must work closely with the clerk, drainage superintendent and other municipal staff.

Field Survey

Survey would:

- Identify drainage features
- Record soil details
- Record tile outlets
- Record other features e.g. fences, pipelines
- Opportunity to discuss project with owners



Plan:



Plan shows:

- Watershed boundary
- Location of drain
- Property ownership & boundaries including lot/conc.
- Other features (e.g. roads, railways)

Assessment Schedule

Construction Assessment Schedule

Roll No.	Owner	Con.	Lot or Part	Approx. Ha Affected	Land Class	ASSESSMENTS		
						Benefit \$	Outlet Liability \$	Total \$
6-1-058-00	G., K. & R. Matthews	1	Pt. Lot 9	2.3	A	4,000.00	7,334.00	11,334.00
6-1-058-01	S. & G. Dixon		Pt. Lot 9	0.1	NA	500.00	328.00	828.00
6-3-001-00	L. & E. Martin		Pt. Lot 10	15.1	A	24,750.00	4,974.00	29,724.00
Total Lands						29,250.00	12,636.00	41,886.00
Southgate Road 22, Township of Southgate						4,500.00	4,114.00	8,614.00
Total Lands and Road						33,750.00	16,750.00	50,500.00
Special Assessment, Work on Southgate Road 22								14,500.00
Total Assessment Matthews / Martin Drainage Works								\$65,000.00

Information Meeting

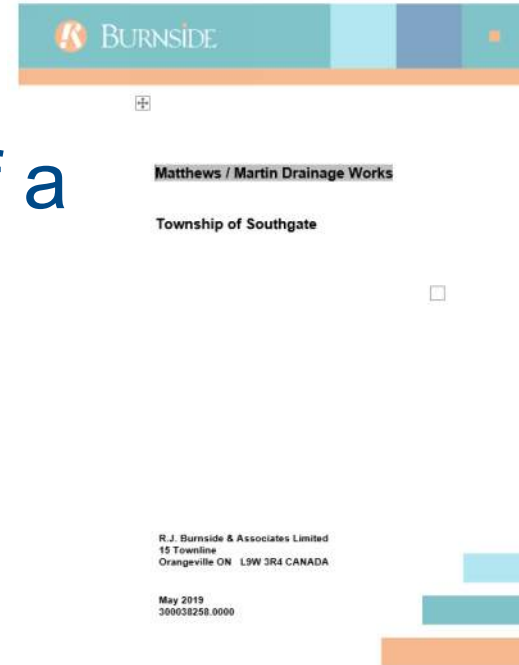
(not a mandatory requirement of the Drainage Act)

- Common practice for the engineer to host an information meeting with owners
- Review information in the draft report
- Address any outstanding issues before finalizing the report

The Final Report

(applies to Petition Drains & S. 78 Improvement Project)

- Report filed with the clerk
- Council instructs clerk to send a copy of the report and a notice of a meeting to consider the report to:
 - All involved property owners
 - Other involved municipalities, if any
 - Conservation authorities, Ministry of Natural Resources and Forestry, road authorities, public utilities, railways
 - OMAFRA



Meeting To Consider Final Report:

(applies to Petition Drains)

- Council meeting, chaired by mayor.
- Engineer gives an overview of the report.
- Participants are allowed to provide input:
 - Can try to influence decision of council or of petitioners
 - Not an opportunity to object to the report, including assessments (that's done through the appeals stage)

Meeting To Consider Final Report:

Two bodies make decisions at this meeting:

- 1) Owners – right to add or withdraw from petition
 - If the petition is no longer valid, original petitioners pay the costs incurred to date.
- 2) Council can decide to proceed or not proceed with the project based on the report. If stopped:
 - Petitioners (*owners*) can appeal to the Tribunal
 - If project stops, municipality pays the costs incurred to date.

Appeals: Court of Revision

- Hears appeals on assessments only
- Appointed by Municipality
 - Must be eligible to be elected to council
 - If council appoints members of council to serve on the Court of Revision, separate the two responsibilities

Appeals: Agriculture, Food & Rural Affairs Appeal Tribunal

- Administered by OMAFRA
- Hears appeals from court of revision and technical appeals
- Decisions: www.canlii.org/en/on/onafraat

Appeals: Drainage Referee

- Administered by OMAFRA
- Legal or procedural appeals
- Decisions: www.canlii.org/en/on/ondr

Final Authorization

- Communal process
- After the appeal stage, a by-law is passed adopting the engineer's report and:
 - Construction the project is authorized, even across properties opposed to the project
 - Costs can be assessed to the lands
 - Drain now has legal existence and becomes part of the municipality's infrastructure

Management of Municipal Drains

- Maintenance & Repair
- Improvement
- Assessment Schedule Updates
- Managing Connections
- Enforcement
- Abandonment



Maintenance & Repair (S. 74)

NOTES:

- Mandatory responsibility
- Possible liability if work is not performed (S.79)
- New engineer's report not required
- Repair work is performed to the standards in the existing report/by-law.
- Costs are assessed proportionally based on the assessment schedule in the existing engineer's report/by-law.

Improvement (S.78)

- Improvement is defined as “any modification of or addition to a drainage works intended to increase the effectiveness of the system
- Owners may ask council to make improve a drain, but this is not a petition; it is still council’s decision to proceed.
- Need community involvement to change the “communally accepted” standards.
 - Improvement examples: drain relocation, drain enclosure, change size, add crossings.

Improvement (S.78)

- New engineer's report using same process as for a new drain, but no petition required
 - Engineer must be fair & impartial (S.11)
- Normally initiated by a "Request for Improvement Form"

Other Management Responsibilities

- Assessment Schedule Updates
 - Severances, subdivisions
- Managing Connections
 - Connecting land outside the watershed
 - Changing land use
- Enforcement
 - Blocked drains, damaged drains, polluted drains
- Abandonment
 - When drain serves no useful purpose

Drainage Superintendent (S.93)

- Appointed by by-law – With this appointment, the Act provides power of entry onto land
- Drainage superintendent duties:
 - Inspect drains periodically
 - Maintain and repair drains
 - Assist engineer in construction & improvement projects
 - Report to council
- Superintendent costs charged to the general funds, NOT to the drain

Summary:

- Municipality administers Drainage Act process.
- Provides a process to resolve common law drainage issues, with:
 - Professional design
 - Compliance with other legislation
 - Independent cost-sharing recommendations
 - Municipality has the authority to recover costs
 - Right of access onto private land
 - Independent appeal bodies
 - Authority for future maintenance/repair