



# Drainage 101

- drainage and how it relates to the farm community

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# Presentation Overview

- Provincial Perspective - Overview
- OMAFRA's Drainage Legislation
- Private Agricultural Tile Drainage Systems
- Tile Loan Program
- Common Law
- Communal Drainage Systems
- Common Questions and Drainage Conflicts
- OMAFRA Resources
- Questions and Answers



# Drainage – provincial perspective

- Drainage is essential for:
  - Agriculture
  - Roads
  - Residential, Commercial and Industrial properties
  - Urban and Rural settings
- Drainage is a complex issue and can be a very contentious issue across rural Ontario because it deals with:
  - private property rights
  - conflicts between neighbouring properties
- Drainage today is a complex task of balancing:
  - property owner needs
  - environmental and societal interests
  - regulatory compliance
  - ongoing maintenance needs of the infrastructure



# Drainage – provincial perspective

- Factors Affecting Drainage!
  - The size of the watershed, topography and soil type
  - Water coming from other upstream properties?
  - System design constraints to meet the property owners needs including outlet availability, location and depth.
  - Changing weather patterns and variability
  - Increased land prices and need to increase productivity on existing land.
- Combination of **private drainage systems** and **communal drainage systems** which eventually outlet to **natural watercourses**
- Some private drainage systems are owned operated by the municipality including roadside ditches and urban storm water systems regulated under the Ontario Water Resources Act.

# Drainage – provincial perspective

## Private Drainage Systems

- support:
  - improved crop productivity (i.e., increasing crop yield per hectare and optimizing fertilizer utilization by crops)
  - safe roads
  - require legal & sufficient outlets; natural watercourses, drains under the Drainage Act, roadside ditches, etc.
- are installed on an estimated 1.9 million hectares of tile drained land in Ontario (out of 3.6 million hectare of cropland in Ontario)

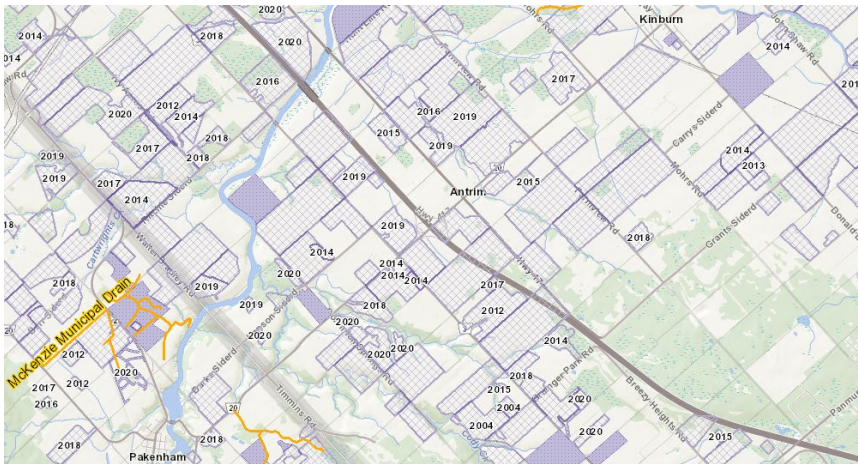




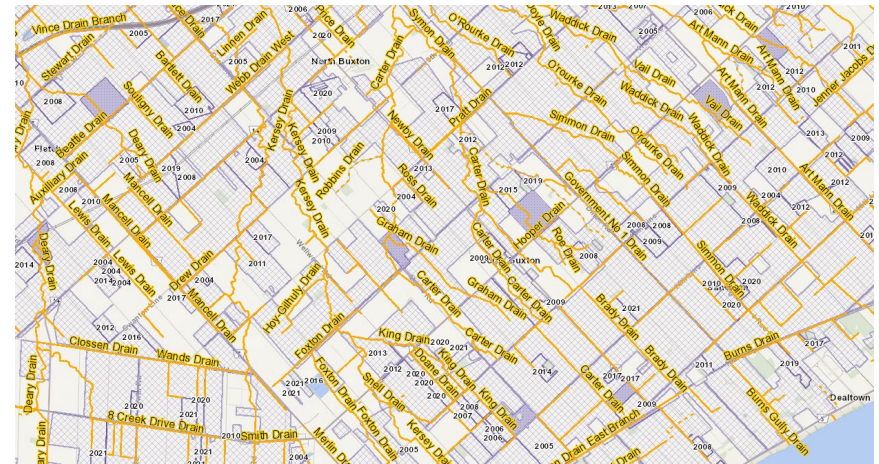
## Drainage – provincial perspective

# Natural Watercourses

- exist across the province
- used for a variety of purposes including as an outlet for agricultural drainage
- are captured under the Common Law
- exist unless modified by legislation such as the Drainage Act



Agricultural watershed with few drains under the Drainage Act and lots of natural watercourses



Agricultural watershed with every water run is a drain  
under the Drainage Act

# Drainage – provincial perspective

## Communal Drains under the Drainage Act

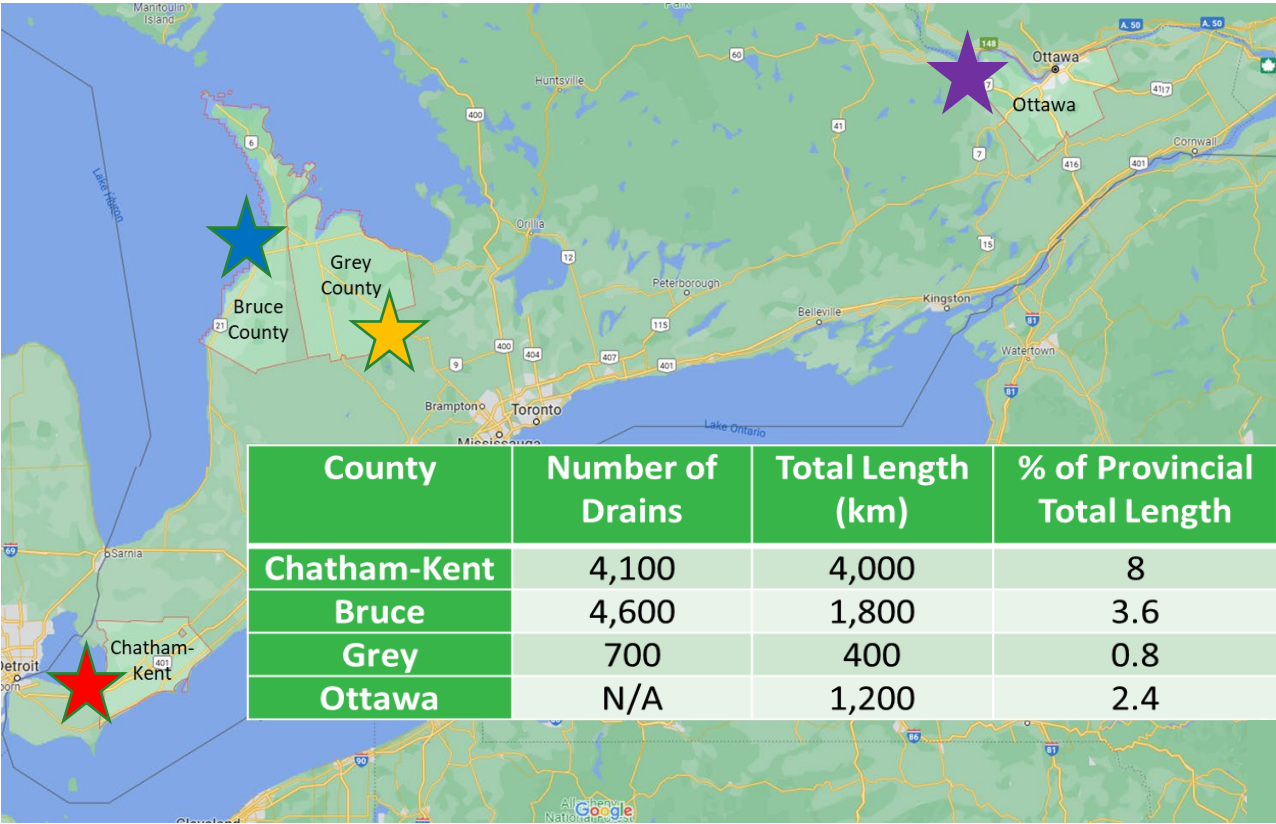
- Approx. 50,000 km of drains constructed under the Drainage Act
- Use of Drainage Act varies across the province

**Chatham-Kent** and surrounding municipalities are extensively drained with agricultural systems and drains under the Drainage Act. The drainage system includes extensive dykes and pumping stations.

**Bruce County** has a fair number / length of municipal drains. They are spread throughout the county, but none are in the far north due to presence of rock.

**Grey County** has relatively few drains under the Drainage Act, and most are in the southern portion of the county.

**Ottawa drainage** is a mix of urban and rural using the Drainage Act and urban stormwater systems.

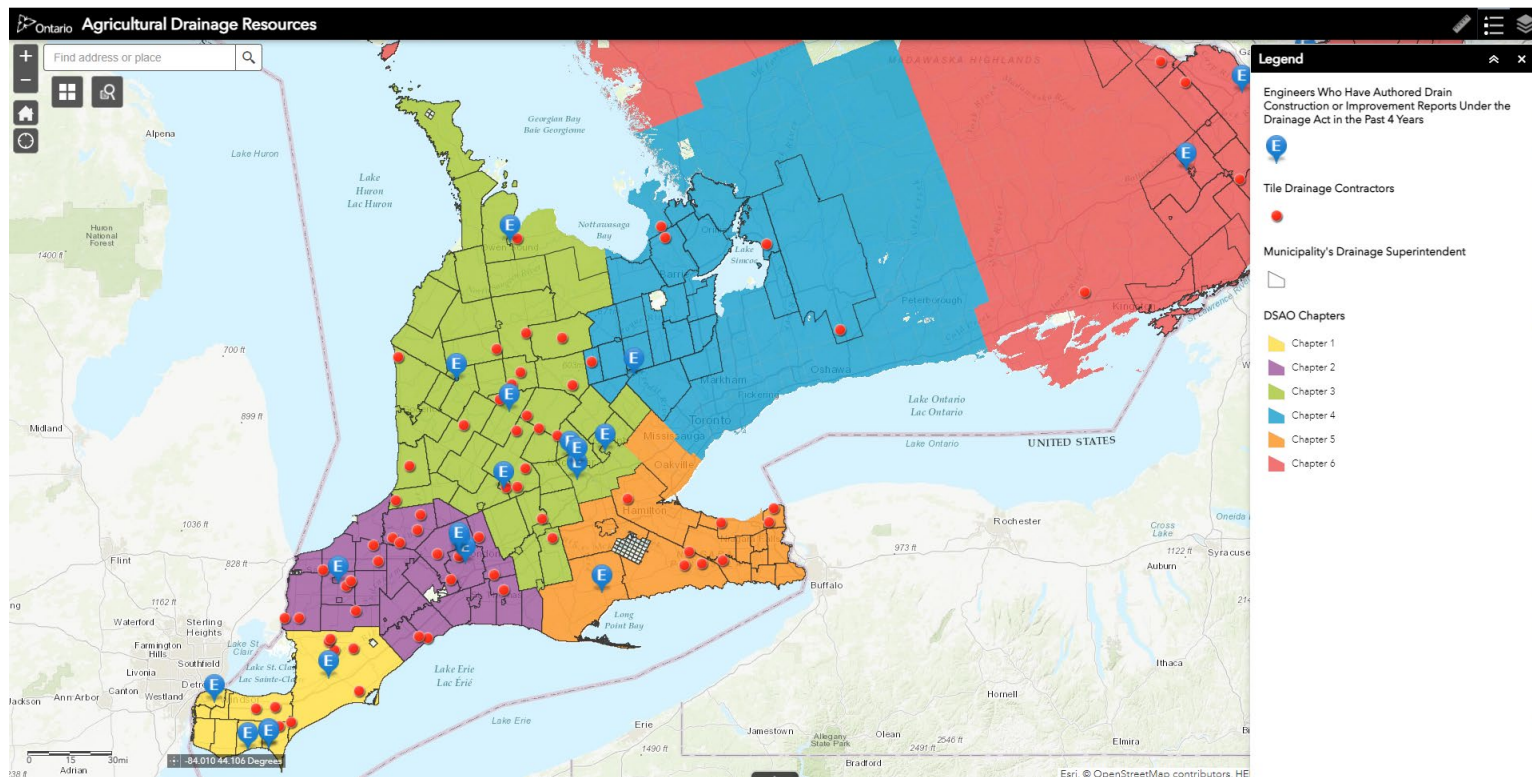


County	Number of Drains	Total Length (km)	% of Provincial Total Length
Chatham-Kent	4,100	4,000	8
Bruce	4,600	1,800	3.6
Grey	700	400	0.8
Ottawa	N/A	1,200	2.4



# Drainage – provincial perspective

- Stakeholders
  - Drainage Engineers
  - Drainage Superintendents
  - Tile Drainage Contractors





# Drainage Legislation: OMAFRA

## Drainage Act

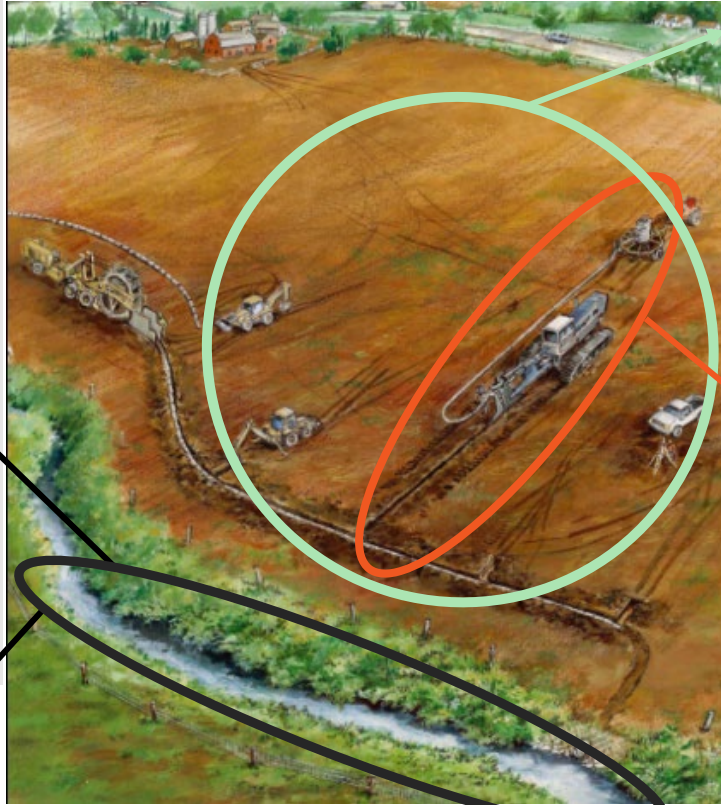
- Sets out process to construct municipal drains
- Local municipality is responsible for implementing process and management of drainage systems
- Costs assessed to property owners within watershed
- Authorizes payment of grants under the Agriculture Drainage Infrastructure Program (ADIP)

Stakeholders: Municipalities, Agricultural landowners, Drainage Superintendent Association of Ontario, Drainage Engineers, road authorities, regulatory agencies (e.g. conservation authorities, DFO), other property owners and MTO

## ADIP

- OMAFRA assesses eligibility of costs but does not approve drainage projects.
- Grants are provided for:
  - Maintenance and repair of municipal drains,
  - Cost of employing a drainage superintendent,
  - Construction and Improvement of municipal drains

Stakeholders: Agricultural landowners and municipalities



## Tile Drainage Act

- Authorizes the **Tile Loan Program**; a landowner can apply for a tile loan for the installation of agricultural drainage system on his/her private land
- The 10 year loan is provided up to a maximum of \$50,000 per farmer per year.
- The Program is a partnership between municipalities and the province.

Stakeholders: Agricultural landowners and municipalities who choose to deliver loan program

## Agricultural Tile Drainage Installation Act

- Regulates installation of agricultural drainage systems on agricultural land.
- Drainage contractors are regulated by the Agricultural Tile Drainage Installation Act.
- A farmer that chooses to install their own drains are exempt from the Act.
- OMAFRA issues licenses and conducts inspections of the following:
  - drainage business
  - machine
  - operator.

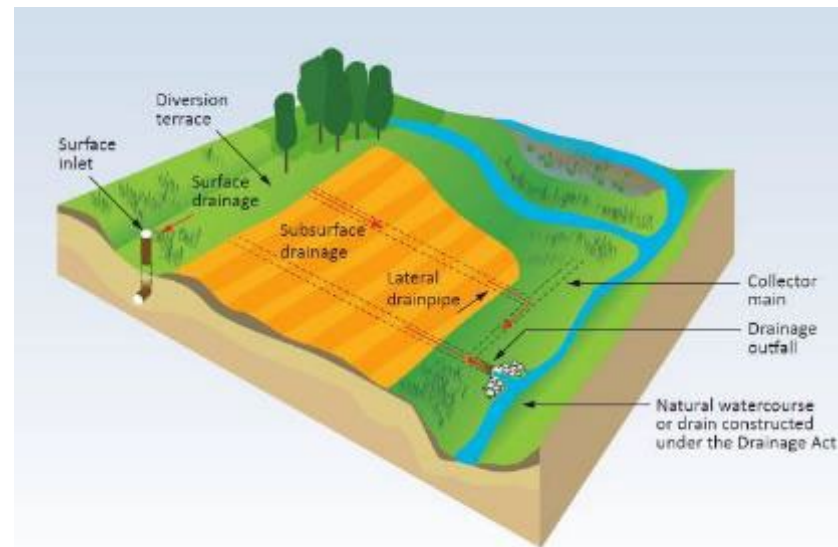
Stakeholders: Contractors- Land Improvement Contractors of Ontario, Drainage machine manufacturers and Agricultural landowners

# Agricultural Drainage Systems



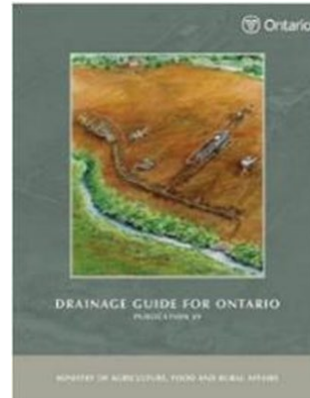
Consists of:

- Lateral drains installed across the field
- Collector main that brings the water to the outlet
- Legal and sufficient outlet
- May include surface drainage features such berms, swales and inlets



# Design of Agricultural Drainage Systems

- Farmers can install their own drainage systems
- Recommended to hire a licensed contractor to design and install your system.
- Drainage Guide for Ontario, Publication 29
- **Legal and sufficient outlet is absolutely critical!**
  - Natural Watercourses
  - Drains created under Drainage Act
    - Petition Drains
    - Award Drains
    - Mutual Agreement Drains
  - Roadside Ditches
  - Illegal outlet situations (e.g. outlet at property line)



## Lateral Drains

- Minimum cover is 600mm (2ft)
- Typical depth is 750mm (2.5ft)
- Spacing varies depending on crop, soil, drainage need and economics
- Layout varies depending on topography, field geometry and farming practices, etc...

## Main Drains

- Installed deeper than lateral drains
- Size based on area drained, drainage coefficient selected and grade

## Outlet

- Drain constructed under the Drainage Act
- Natural Watercourse
- Mutual Agreement drain



# ATDIA and O.Reg.18

Sets out the legal framework for licensed contractors and OMAFRA's role

- Regulates contractors installing private drainage systems on agricultural land.
- Individual farmers are exempt from the legislation if working on their own property.

## OMAFRA:

- Issues licenses to drainage contractor business, machines and individual operators
- Training requirements to support licensing as required by regulation
- Conducts various inspections
- Liaises with stakeholder to provide regulatory information, outreach on best management practices, etc.

## # of Licenses

- Business –  $\approx$  90 active licenses
- Machine –  $\approx$  200 active licenses
- Operator –  $\approx$  400 active licenses





# Tile Drainage Act – Tile Loan Program

- Provide owners of agricultural land with access to loans for the installation of tile drainage systems through their local municipality.
- Tile Drainage Act passed in 1878

## Process

- Owner:
  - applies to municipality for loan
  - once approved, work is completed
- Municipality:
  - inspects/certifies the work
  - sells debenture to Province with funds flowing through municipality to applicant
  - passes a levying by-law with annual repayments, same status as property taxes
  - collects the annual payments from applicant and repays province.

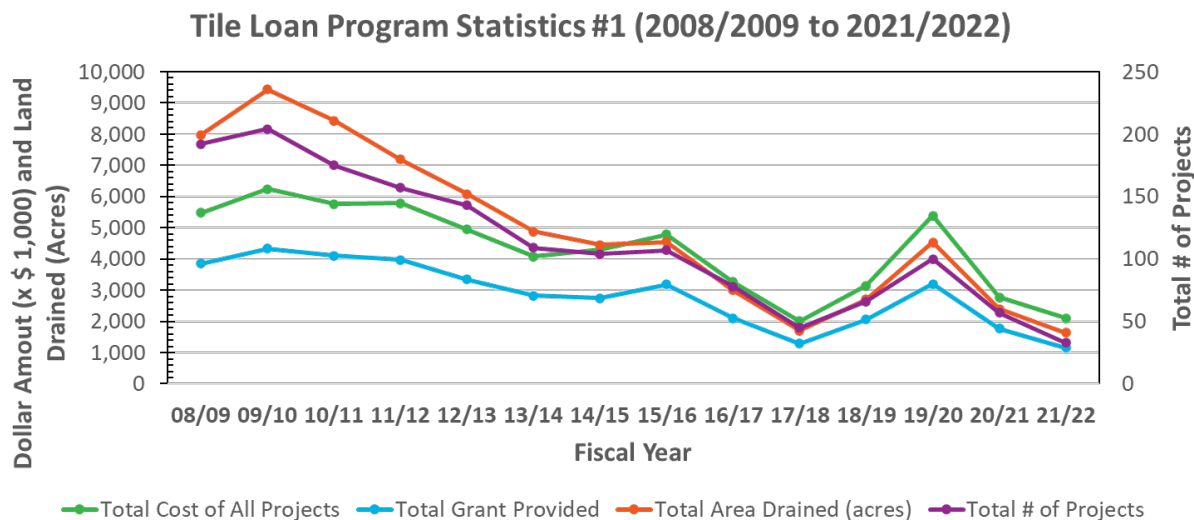
# Tile Drainage Act – Tile Loan Program

## Advantages of the Tile Loan Program for farmers

- Simple application process
- Alternate source of financing available to farmers
- Longer term loan (10-year amortization period)
- Redemption can be made at any time without penalty
- Repayments have the same status as property taxes (i.e., secure)

## Current Terms

- 10-year term loan at fixed 6% interest rate
- can receive a loan of up to 75% of the cost of the work to a maximum of \$50,000



# Common Law - Drainage

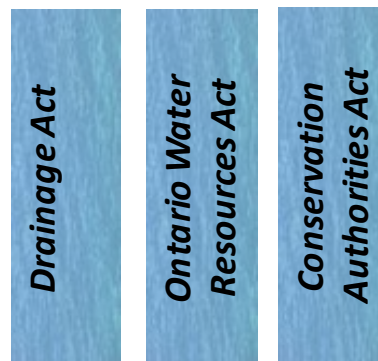
## Common Law

- Rules, principles and customs established in England
  - Applies across Canada with the exception of Quebec
- Almost all law on watercourses is founded on the maxim of the Common Law:
  - *Water flows naturally and should be permitted to*
- Distinguishes between:
  - **Natural watercourse – riparian rights**
  - **Surface water – no right of drainage**
- Always exists unless modified by Statute Law
- No agency assigned responsibility to resolve drainage issues
- Issues resolved by mutual agreement or court system
- Drainage Act was passed to provide property owners with a process to solve drainage problems.

### **Natural Watercourse**

*Is a stream of water which flows along a defined channel, with beds and banks, for a sufficient time to give it substantial existence, and may include streams that dry up periodically*

## Statute Law



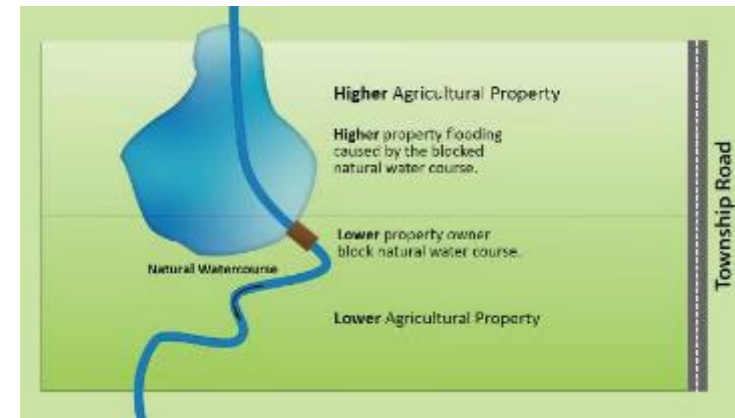
## Common Law

Natural Watercourses  
Riparian Rights  
Surface Water

# Natural Watercourses under Common Law

## Riparian land/owners - abutting a natural watercourse:

- Have the right of drainage
- Have the right to use water for domestic or natural purposes
- Must accept the water, even if flooding occurs
- Under common law, an owner is allowed to modify the channel within property limits but cannot negatively impact upstream and downstream owners.
  - Must adhere to other regulatory requirements such as the Conversation Authorities Act
  - If they modify/interfere/dam a natural watercourse, they can be held liable for any impacts.





# Surface Water under Common Law

## Surface Water

- Water that runs in no defined channel (i.e. not in a natural watercourse)
  - Essentially rainwater unless/until it reaches a natural watercourse
- Has no right of drainage
- Lower owner does not have to accept the water
  - can protect their property (e.g. berms or dykes)
- Includes collected and uncollected water
  - Flow of surface water is not grounds for a lawsuit
  - If collected/discharged, then grounds for lawsuit
    - Courts can order damages to be paid.
  - Must not be collected and diverted to land that would not naturally receive it



## Prescriptive Right of Drainage:

- If surface water is collected and deposited on lower land uncontested for 20 years
- Only a judge can grant 'prescriptive right'

# Common Law - drainage

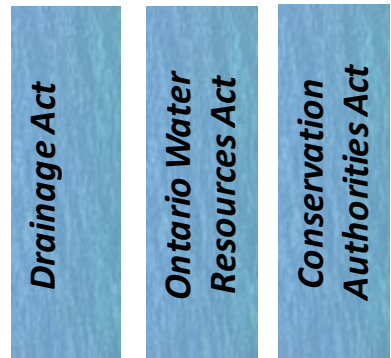
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## Statute Law



## Common Law

Natural Watercourses  
Riparian Rights  
Surface Water

# Drainage Act – An overview

- Enabling legislation that provides a process to solve private drainage issues
  - Watershed based in approach
  - Administered by the lower-tier municipality
- Construction of new drains can only be initiated by property owners and road authorities.
- Improvements to existing drains can be requested by landowners, road authorities, drainage superintendents or municipal council
- Design and cost sharing completed by a professional engineer
- Allows for property owner input
- Empowers entry onto private property for the purposes of constructing, improving, maintaining or repair the drain
- Provides for independent appeal bodies
- Cost of drainage system is paid by all of the property owners in the watershed
- Public utilities including federally regulated railways are assessed additional costs
- Drain is authorized and protected by by-law adopting the engineer's report
- Drain has legal existence and is recognized as part of a municipality's infrastructure
- Provides authority and responsibility for future maintenance and repair by municipality



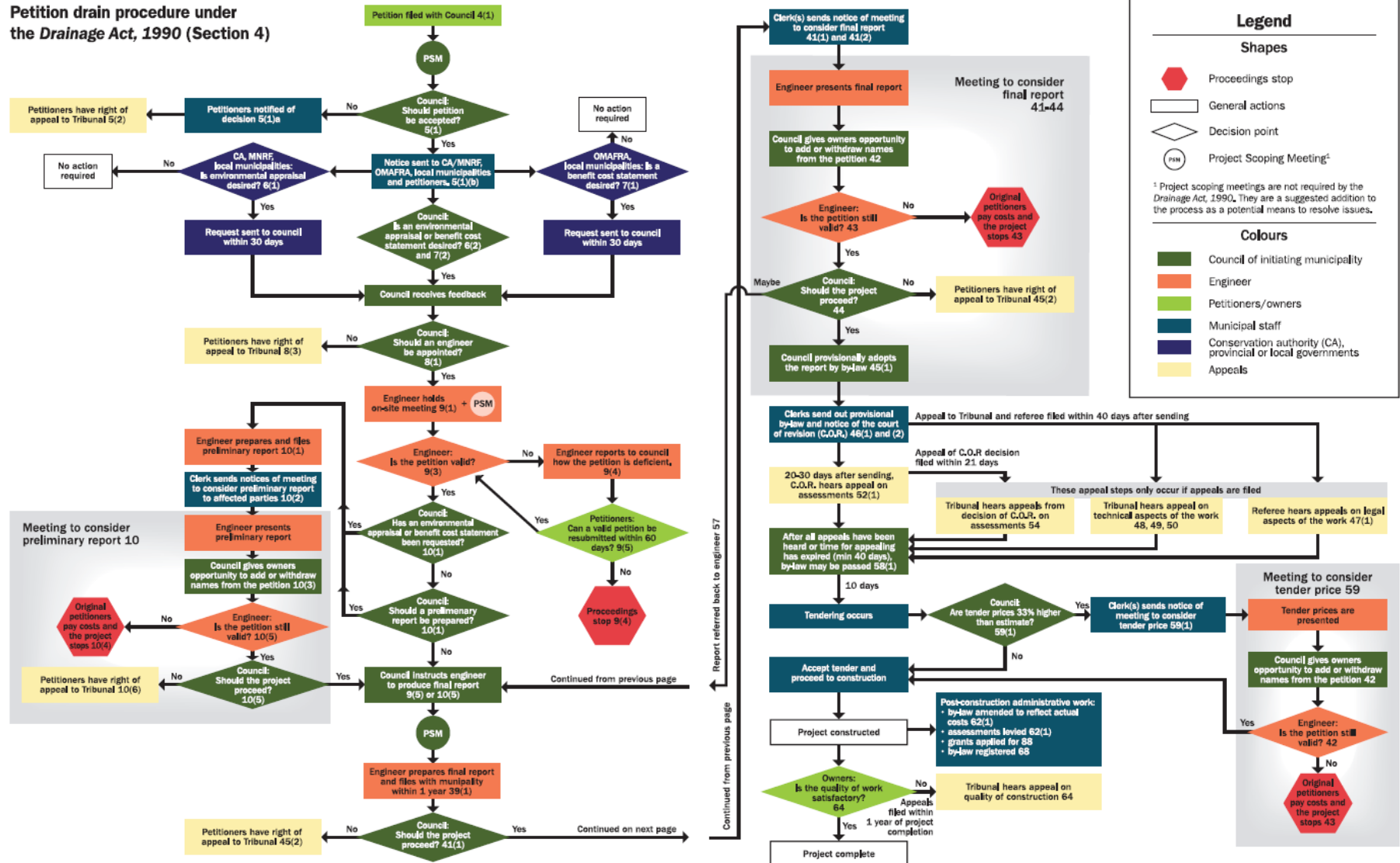
# Farmers may be involved in the following:

- Petitions for the creation a new drain under Section 4
- Processes for existing drains:
- Improvement projects under Section 78
  - New engineer's report is required for all improvement projects
  - Council must consider requests and appoint engineer for improvement projects
  - Major Improvements – similar to the new drain process
  - Minor Improvements – simpler process for 1 property only
- Maintenance Projects under Section 74
- Maintenance Assessment Schedule Updates under Sections 76 or 65
- Abandonment Requests under Section 84



# New Drain Process under Section 4

### Petition drain procedure under the *Drainage Act, 1990* (Section 4)



# Minor & Major Improvements

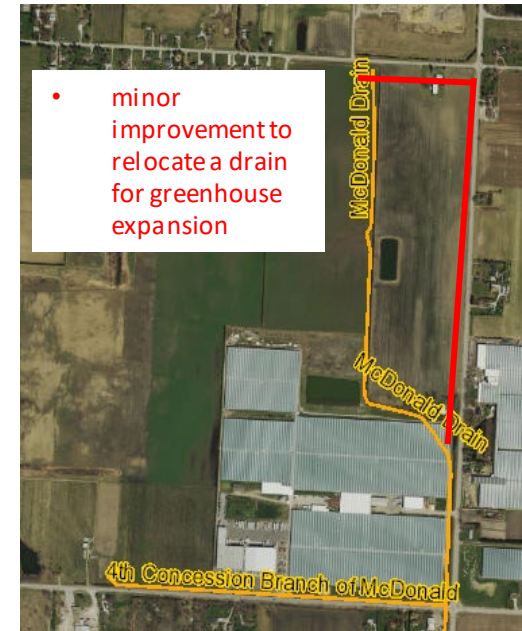
## Section 78

- Major improvements are:
  - are required to address the needs of all or a large portion of the properties in the watershed
- Examples of major improvement projects include:
  - Changing the course of the drainage system.
  - Making a new outlet for the drain.
  - Constructing a tile drain under the bed of the drain.
  - Constructing, reconstructing the drainage system.
  - Extending the drainage system to an outlet.
  - Enclosing all or part of the drainage system.
  - Consolidating two or more drainage systems.
  - Any other activity to improve the drainage works, other than an activity prescribed by the Minister as a minor improvement.
- Part of a drain can be abandoned as part of a new engineer's report for a major improvement under Section 78

# Minor & Major Improvements

## Section 78

- Minor Improvements are:
  - **new as June 30, 2021**
  - detailed in O.Reg.500/21
  - are required to address a specific need of one property rather than the entire drainage system
  - designed to allow projects to be completed in a more timely and cost-effective manner
- Examples of minor improvement projects may include:
  - a farmer requesting a wider crossing to accommodate larger farm equipment
  - the addition of a second crossing
  - the relocation of a drain on an individual property



# Factsheet

#21-049 | SEPTEMBER 2021

## Minor Improvement Projects under the *Drainage Act, 1990*

T. Brook, P.Eng.

### INTRODUCTION

Drainage systems under the [Drainage Act, 1990](#) are designed and constructed to provide a long service life, especially with maintenance and repair activities completed on the drain. However, there are times when it is necessary to make improvements to the drain because of changes in land use, agricultural practices and technology. Drain improvements require the creation of a new engineer's report. Property owners can request their local municipality make improvements to existing drains.

The process to improve a drainage works has been in the Drainage Act, 1990, for quite some time and applies to any changes to the drainage works. The process requires extensive consultation with all property owners in the watershed. Recent changes (July 1, 2021) to the *Drainage Act, 1990*, have modified the original improvement process. There are now two different types of improvement projects that can be requested under Section 78 of the *Drainage Act, 1990*, depending on the details of the situation:

- major improvement projects
- minor improvement projects

The major improvement project process is relatively unchanged from the process that existed in the *Drainage Act, 1990*, prior to June 30, 2021.

The minor improvement project process is new (as of July 1, 2021). It involves changes that are required to address a specific need of one property rather than the entire drainage works. The process is designed to allow projects to be completed in a more timely and cost-effective manner. Examples of minor improvement projects include:

- a farmer requesting a wider crossing to accommodate larger farm equipment
- the addition of a second crossing
- the relocation of a drain on an individual property
- the incorporation of a buffer along a drain

### DETERMINING IF A PROJECT IS A MINOR IMPROVEMENT

A drain project is considered a minor improvement project provided it meets all of the criteria listed in section 7 of [O. Reg. 500/21](#).

The criteria are:

- The project is initiated by the owner of an individual property or two or more adjacent properties that are owned by the same individual or related parties.
- The initiating property owner is paying for all the costs of the project.
- The project does not require access from neighbouring properties, or written consent has been received from the owners of the neighbouring properties. Proof of consent must be provided to the municipality when the project is requested.

available at

<https://www.ontario.ca/page/minor-improvement-projects-under-drainage-act-1990>



# Maintenance & Repair

## Section 74

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

- *...shall be maintained and repaired by each local municipality through which it passes...*
- *...at the expense of all the upstream lands and roads...*
- *...in the proportion determined by the then current by-law...*
- Property owners can use 'Form 0202' to request maintenance on a drain
- Mandatory responsibility
- Potential liability if work is not performed

**Notice of Request for Drain Maintenance and/or Repair**  
*Drainage Act, R.S.O. 1990, c. D.17, subs. 79(1)*

To: The Clerk of the Corporation of the  of

Re:   
(Name of Drain)

In accordance with section 74 and 79(1) of the *Drainage Act*, take notice that I, as a person affected by the above mentioned drain, request that it be maintained and repaired.

Provide a brief description of how you are affected by the condition of this drain:

**Property Owners:**

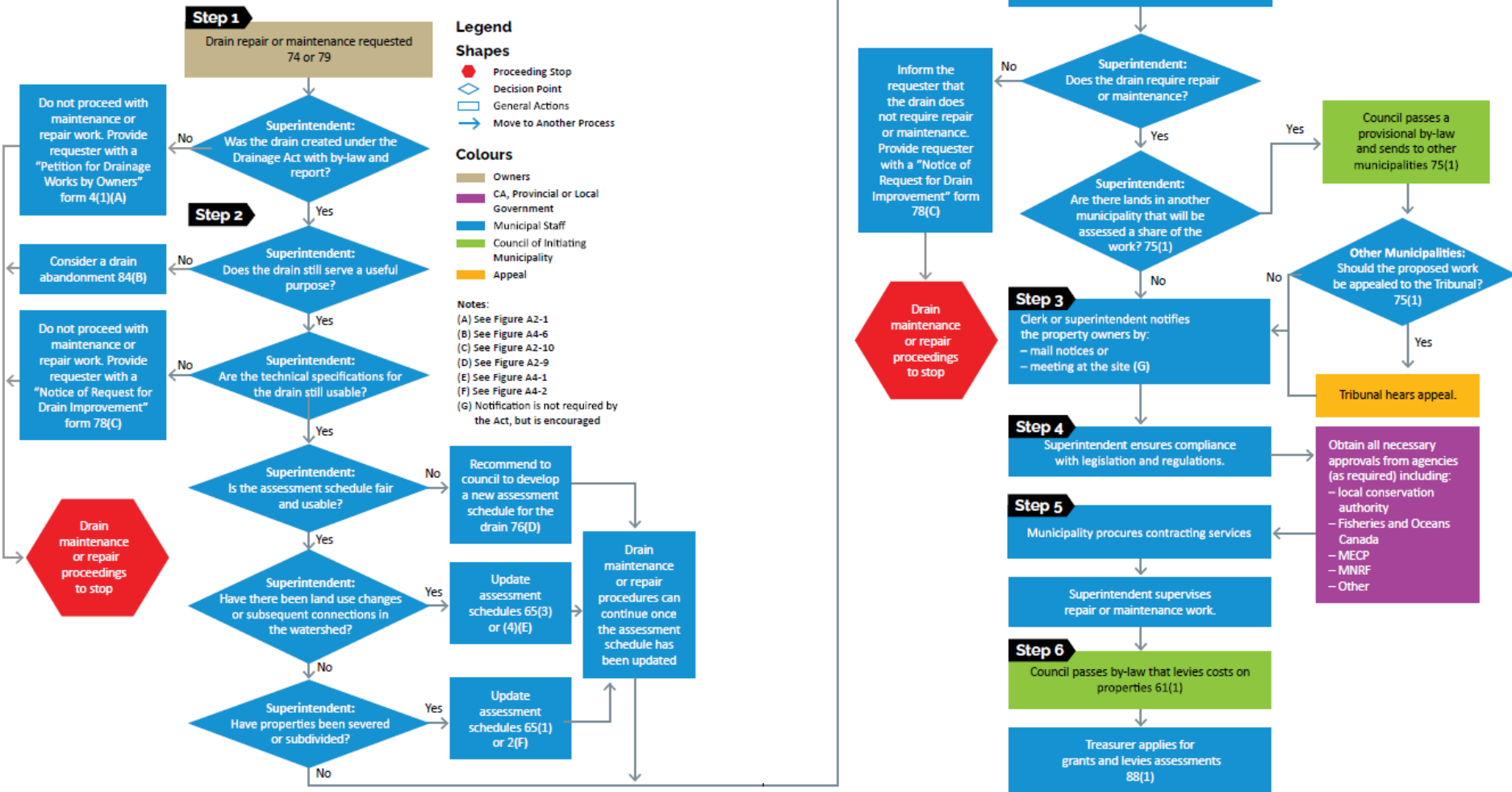
• Your municipal property tax bill will provide the property description and parcel roll number

# Maintenance & Repair

## Section 74

- Drainage Superintendent follows a detailed process to determine if maintenance is the correct pathway!
  - drain under the Drainage Act
  - still useful
  - technical specifications still useable
  - assessment schedule fair and useable
  - land use changes
  - maintenance or repair necessary
- The existing engineer's report adopted by by-law governs:
  - Repair and maintenance work is performed to the standards in the existing report adopted by by-law.
  - Costs are assessed in the proportions identified in the assessment schedule in the existing engineer's report/by-law.
- New engineer's report not required for maintenance & repair
  - May encounter situations where a drain cannot be maintained under the existing report and a new report would be required.

# Drain Maintenance or Repair Procedures



# ADIP Grants

- Authorized by the Drainage Act (Sections 85 – 90)
  - Generally, pay grants towards:
    - Assessments on agricultural land for drain repair, maintenance, construction or improvement
    - Municipal cost of employing a drainage superintendent
- Grants applied for by municipalities annually across the province include:
  - 40 – 50 new drain reports annually across the Province
  - improvement projects(≈125) and maintenance (≈2,400) projects completed on existing drains
- Agricultural Drainage Infrastructure Program (ADIP) - supplements the requirements specified in the Drainage Act.

ADIP Policies can be found at

[http://www.omafra.gov.on.ca/english/landuse/facts/adip\\_admin.htm](http://www.omafra.gov.on.ca/english/landuse/facts/adip_admin.htm)

# Other Types– Award Drains

- Property owners may also encounter existing Award Drains which were:
  - created for nearly a century under the Ditches and Water Courses Act until it was repealed on June 1, 1963
  - named because the work of construction was "awarded" to people along the ditch.
- Once constructed, maintenance was to be completed by the respective owners as described in the agreement (or 'award').
- Current Situation:
  - no new award drains can be constructed
  - existing award drains are still legal
  - can be maintained by the owners in accordance with the award
  - When an owner does not maintain the drain, there are no statutory provisions to enforce compliance.
  - An effected owner has the following alternatives:
    - Initiate legal proceeding for remedy and/or damages
    - Petition the local municipality for a drain under the Drainage Act



# Other Types– Mutual Agreement Drains

Mutual agreement drains are:

- private drainage systems;
- authorized, constructed, improved, financed (owned) and maintained through a written agreement;
- defined under Section 2 of the Drainage Act, 1990;
  - a reference to the Drainage Act, 1990
  - legal descriptions of the lands on which the drainage system is constructed
  - the estimated cost of the drainage system
  - a description of the drainage system, including its design and approximate location
  - the proportion of the cost to be paid by each owner of the land for the construction, improvement and future repair and maintenance of the drainage system
  - the date the agreement was executed
  - an affidavit of a witness to the execution of the agreement
- may or may not be registered on property title.
  - If NOT registered on title, then only binding on original signatories
  - If registered, then binding on all future property owners.

# Other Types – Mutual Agreement Drains

- Other items that can be addressed in the Mutual Agreement
  - Technical details of the drain – e.g. location, ditch bottom elevation, side slope, vegetation requirements, etc.
  - Details of who will oversee construction of any necessary improvements and permitting obligations?
  - Notification process, work arrangements and cost allocation for future drain maintenance and repair.
  - Statements that ensure that no other properties will be connected to the private drainage system.
- Advantages of Mutual Agreement Drains
  - Usually cheaper than drains under the Drainage Act
  - Property owners can negotiate conditions and cost sharing arrangement
  - If registered on property title, binding on future property owners
- Disadvantages of Mutual Agreement Drains
  - If not engineered, property owners liable for any design flaws.
  - If one of the parties fails to comply with the terms of the agreement, legal action must be undertaken by the other parties.



# Drainage Act – Property owner questions

- There is a drain under the Drainage Act on my property, how do I request that:
  - maintenance be completed on a section of the drain?
  - the drain be abandoned?
  - the open ditch is replaced with a pipe (i.e. enclosed)?
  - the ditch be moved from the middle of my field to the edge?
  - the drain be made deeper to accommodate my new tile drainage system outlet?
- Drainage Act has various process to address your specific questions and concerns on a drain under the Drainage Act!
- Understanding the difference between maintenance and improvement
- Contact your local municipality's Drainage Superintendent
  - <https://data.ontario.ca/dataset/drainage-superintendents>





# Common Questions and Drainage Conflict

**“whisky is for drinking,  
water is for fighting!”**

- conflict is often over water  
shortage and drought.

In Ontario, water conflict is more  
often about excess water and drainage



# Common Questions and Drainage Conflict

- **Common Problems between rural neighbours include:**
  - Can the municipality stop me from putting my water in the roadside ditch?  
That's the way it goes naturally!
  - Can I use the roadside ditch to discharge my tile drain water?
  - Can my neighbour stop surface water from my land from coming onto their land?
  - If my neighbour refuses to share in the cost of a drain (e.g. tile or ditch) across his property, can I just outlet my tile system at the fence line?
  - What can I do to make my neighbour clean out the ditch/creek on their property?



# Connections to Roadside Ditches

Roadside ditches can be either:

- private drain for the purpose of draining the road, or
- part of it can be a Mutual Agreement drain, or
- a drain under the Drainage Act.

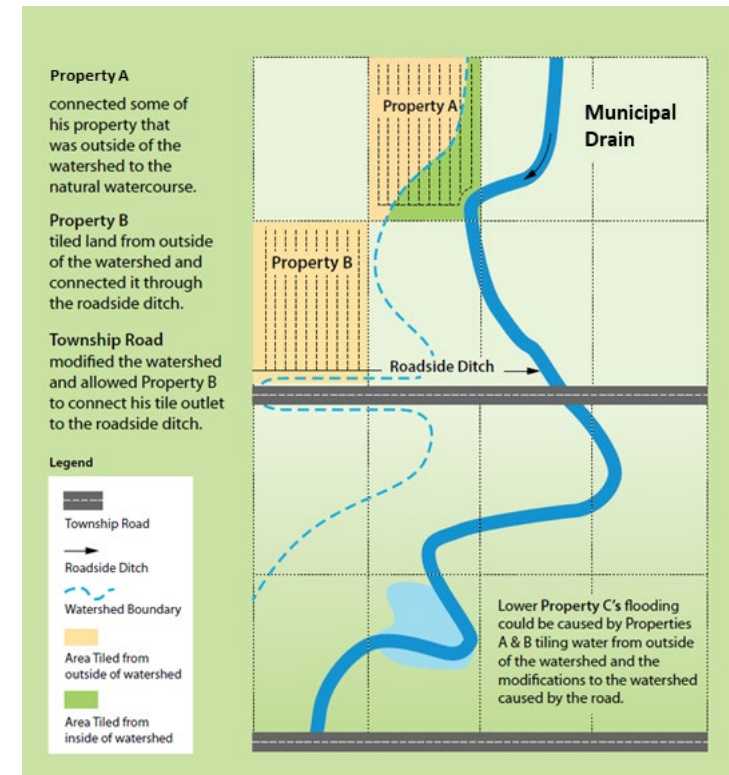
If the Roadside ditch is **not** under the Drainage Act

- With road authority consent, they can be used as an outlet for private drainage systems
- Municipalities have **no** obligation to accept water or allow connections to the roadside ditch
  - it is private drainage system meant to drain the road
- Some municipalities:
  - allow connections **without** conditions/approval
  - allow connections **with** conditions/approval
  - do **NOT** allow connections

# Connections to Roadside Ditches

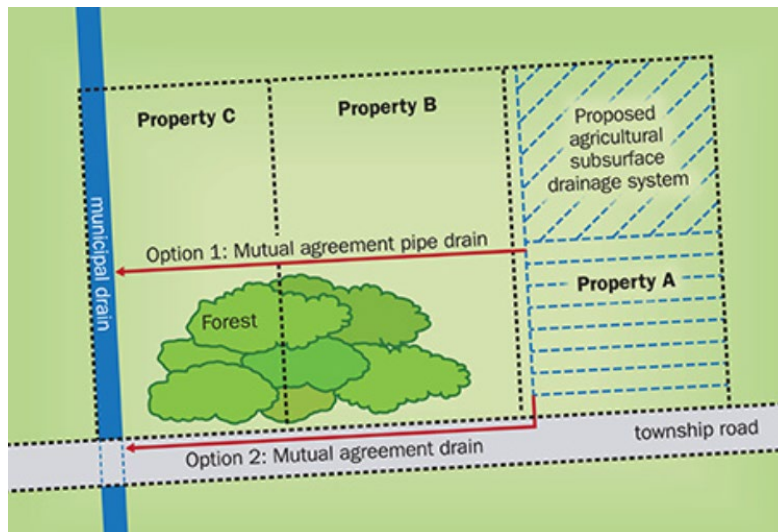
## If the Roadside ditch is **not** under the Drainage Act


- If municipality is willing to allow connections, they should consider:
  - is approval needed for each connection?
  - should a policy be developed related to this issue?
  - does the roadside ditch have enough spare capacity to handle the extra water?
  - is the roadside ditch deep enough to allow connection by the private system?
  - would the connection (e.g. extra water) create a potential issue with road drainage, stability, flooding, downstream issues, etc.?
  - what conditions should the municipality attach to all/each approval?
- Road authority will assume liability for potential damages caused downstream if they accept the water.



# How do I get an outlet across my neighbour's property?

- good neighbourly discussion/relationship for informal agreement
  - Handshake agreement
  - Permission to use roadside ditch
- mutual agreement drain with/without registration on title
  - with agricultural property owner
  - with municipality to use road right of way or roadside ditch
- petition for a drain under the Drainage Act




 Ministry of Agriculture, Food and Rural Affairs

**Petition for Drainage Works by Owners**  
**Form 1**  
 Drainage Act, R.S.O. 1990, c. D.17, clause 4(1)(a) or (b)

This form is to be used to petition municipal council for a new drainage works under the Drainage Act. It is not to be used to request the improvement or modification of an existing drainage works under the Drainage Act.

To: The Council of the Corporation of the Township of North

The area of land described below requires drainage (provide a description of the properties or the portions of properties that require drainage improvements):  
N<sup>1</sup>/<sub>2</sub> Lot 3, Concession 5, North Township.  
Lot 2, Concession 5, North Township

In accordance with section 9(2) of the Drainage Act, the description of the area requiring drainage will be confirmed or modified by an engineer at the on-site meeting.

As owners of land within the above described area requiring drainage, we hereby petition council under subsection 4(1) of the Drainage Act for a drainage works. In accordance with sections 10(4), 43 and 56(1) of the Drainage Act, if names are withdrawn from the petition to the point that it is no longer a valid petition, we acknowledge responsibility for costs.

**Purpose of the Petition** (To be completed by one of the petitioners. Please type/print)

Contact Person (Last Name)	First Name	Telephone Number
<u>Smith</u>	<u>John</u>	<u>519-555-1214</u>

Address  
 Road/Street Number 1438 Road/Street Name Concession 5 Road

Location of Project  
 Lot 1-3 Concession 5 Municipality North Township Former Municipality (if applicable)

What work do you require? (Check all appropriate boxes)

☒ Construction of new open channel  
☐ Construction of new tile drain  
☐ Deepening or widening of existing watercourse (not currently a municipal drain)  
☐ Enclosure of existing watercourse (not currently a municipal drain)  
☐ Other (provide description ▼)

Name of watercourse (if known)  
Webfoot Award Drain

Estimated length of project  
4000 to 5000 feet

General description of soils in the area  
Clay loam

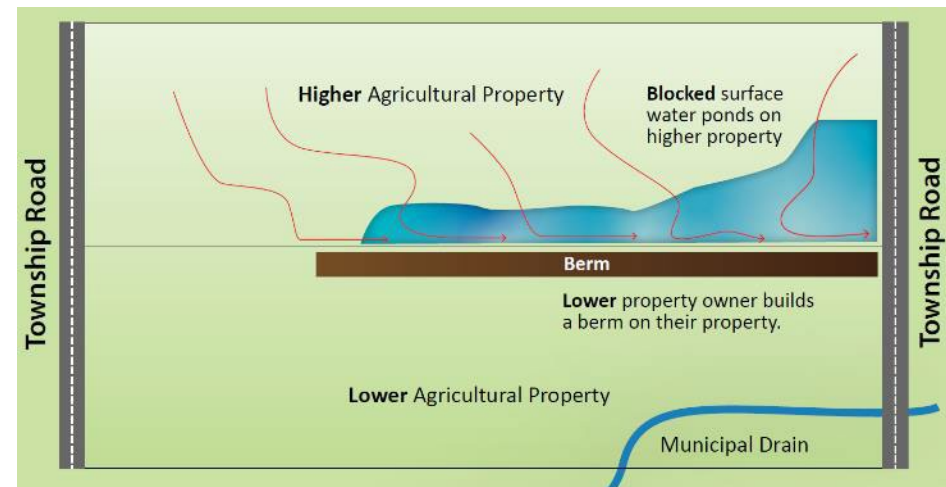
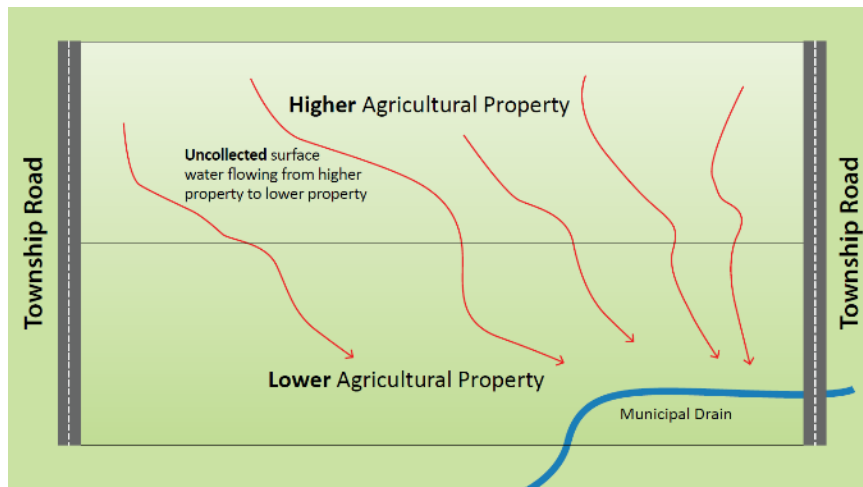
What is the purpose of the proposed work? (Check appropriate box)  
☐ Tile drainage only ☐ Surface water drainage only ☒ Both

Petition filed this 20<sup>th</sup> day of July, 2015

# Can my neighbour stop surface water from my land from coming onto their land?

## Surface Water

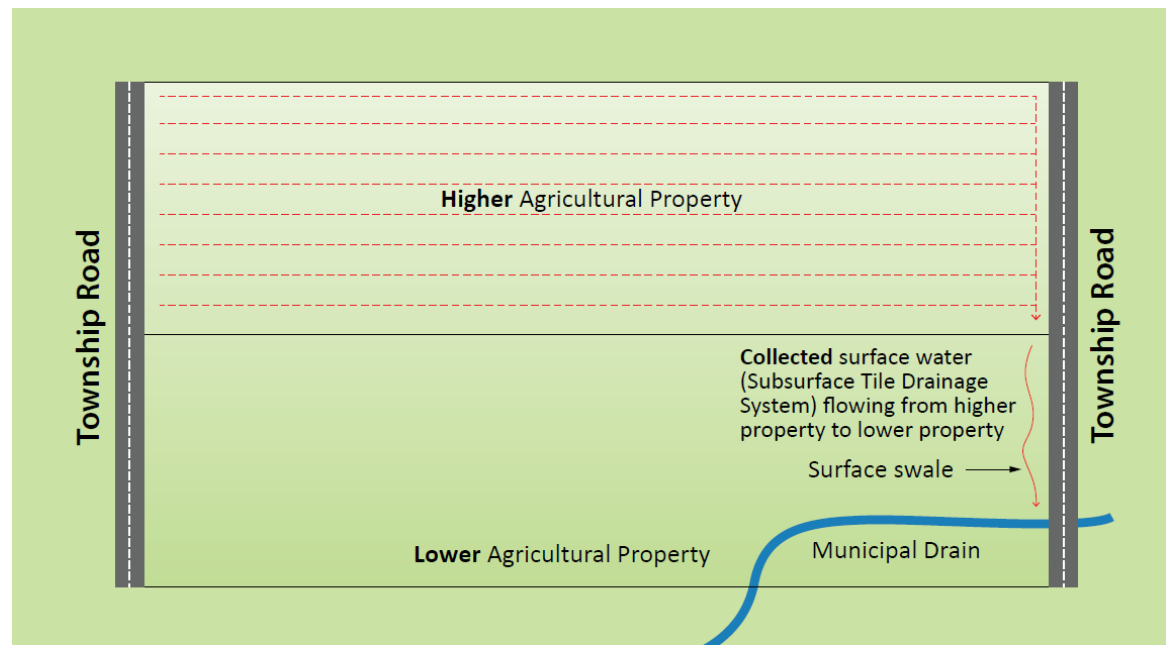
- Water that runs in no defined channel (i.e. not in a natural watercourse)
- Has no right of drainage
- Includes collected and uncollected water
- Flow of surface water is not grounds for a lawsuit
- Lower owner does not have to accept the water; can protect their property (e.g. berms or dykes)



# Can my neighbour stop surface water from my land from coming onto their land?

## Surface Water

- If collected/discharged, then could be grounds for lawsuit
- Courts can order damages to be paid
- Even if higher property is assessed into the drain under the Drainage Act, must negotiate with lower owner (agreement) or petition for a branch drain to connect.





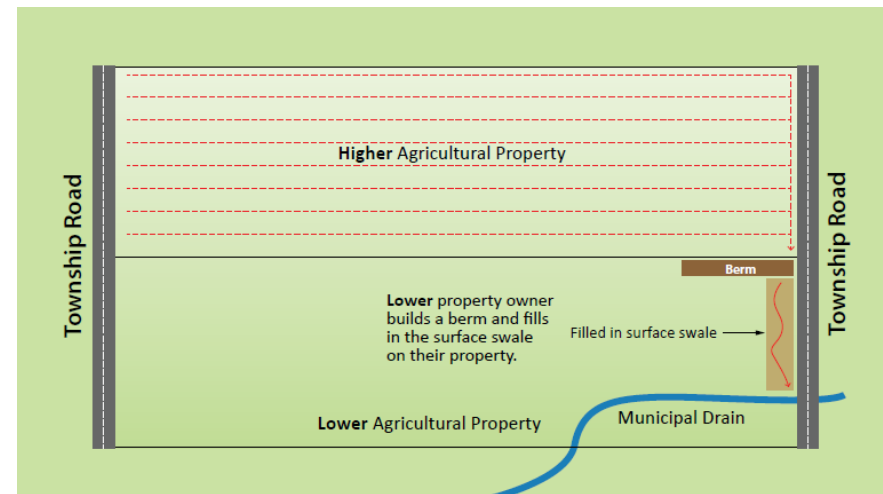
# Can my neighbour stop surface water from my land from coming onto their land?

## Surface Water

- Lower owner does not have to accept the water; can protect their property (e.g. berms or fill in the swale or ditch)

## Prescriptive Right of Drainage:

- If surface water is collected and deposited on lower land:
  - **Unchanged;**
  - **Uncontested; and**
  - **for a period of at least 20 years**
- Only a judge can grant 'prescriptive right'
- To keep a "prescriptive right", you must not later increase the flow of water (additional drainage)



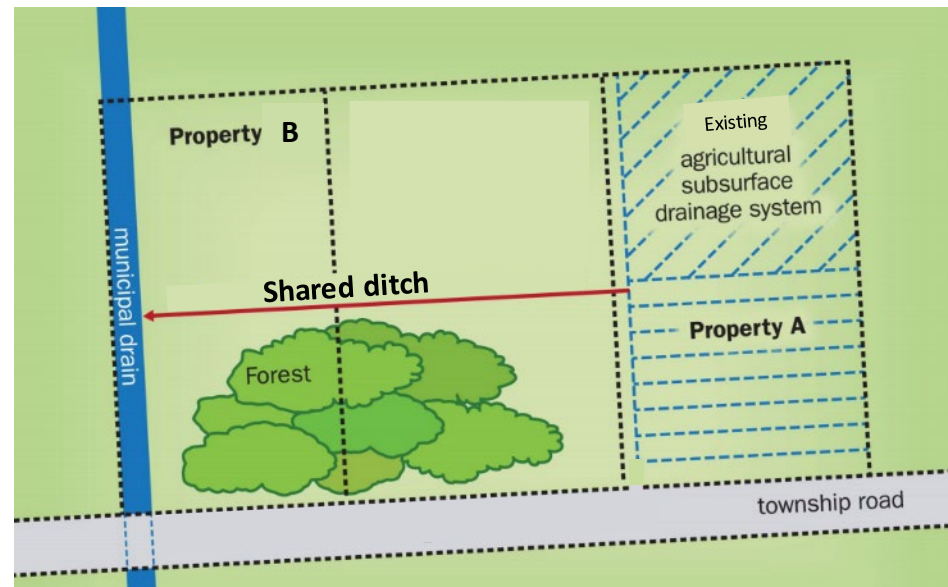
# Case Law – Prescriptive Rights

Boynton vs. Lowe  
& Schwartz

- Ditch shared by two landowners
- Property A owner called contractor to maintain a section of ditch
- Contractor mistakenly worked on wrong property (Property B)
- Property B owner blocked ditch
- Property A owner sued Property B owner and contractor

## Court decision:

- Prescriptive right was proven
- Property A owner acquired an easement to drain across the lower owners property
- Property A owner acquired the right to enter onto the lower owner's land to maintain/repair the ditch
- No damages awarded

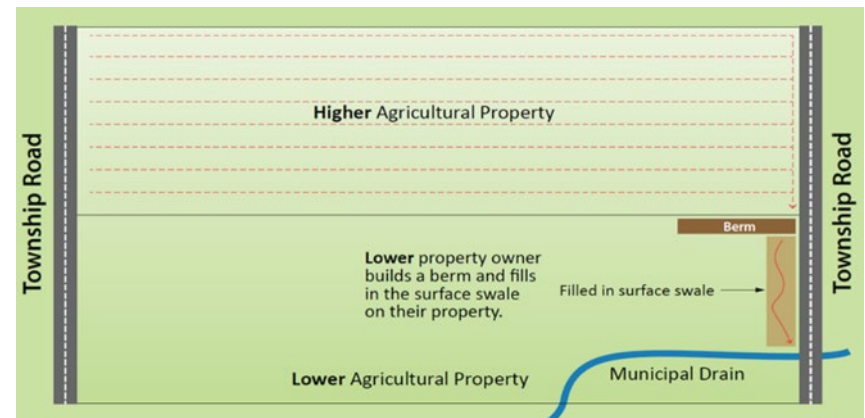
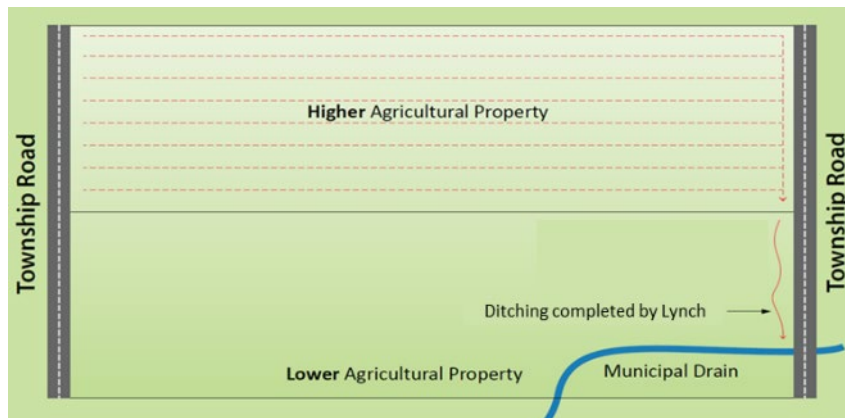


# Case Law – Collected Surface Water

Derbecker vs.  
Lynch

Can I just outlet my tile system at the fence line?

- Derbecker (Higher owner) had some tiles directed onto Lynch's (lower owner) property
- Derbecker had additional tile drainage work done and outletted at 20 feet from property line
- Caused erosion on Lynch's property
- Lynch did ditching to address problem on his property
- Derbecker refused to contribute to the costs
- Lynch blocked flow of water onto his land



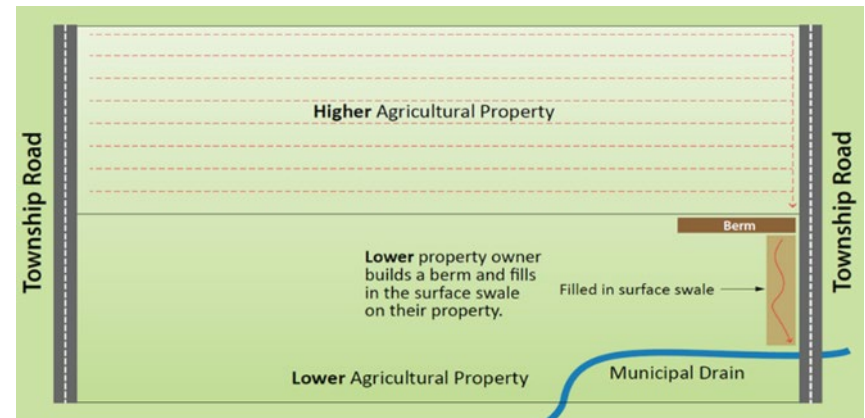
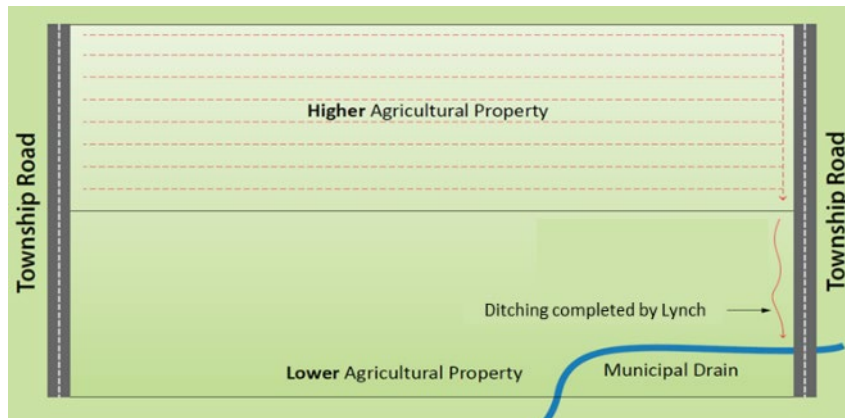
# Case Law – Collected Surface Water

Can I just outlet my tile system at the fence line?

Derbecker vs.  
Lynch

## Court Decision

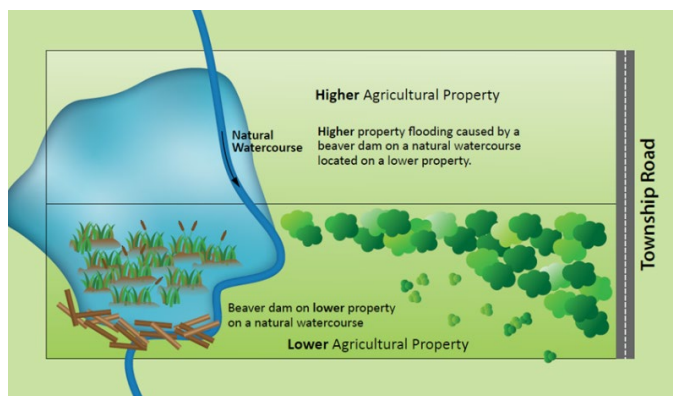
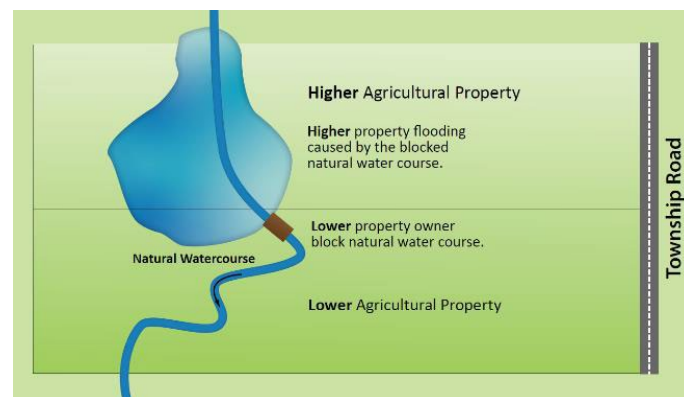
- Reviewed definition of “natural watercourses” and determined that this did not apply
- The original drainage had a “prescriptive right”
- The added water did not have “prescriptive right”
- Derbecker was ordered to install tile across Lynch’s land
- Lynch was ordered to remove blockage once the tile was installed
- Derbecker ordered to pay total damages of \$6,400



# What can I do to make my neighbour clean out the ditch/creek on their property?

Depends on the nature of the watercourse and what is causing the problem...

- If it is on a(n):
  - Award Drain
  - Mutual Agreement Drain
  - Petition Drain (municipal drain)
  - Private Drain (agricultural or roadside ditch)
  - Natural Watercourse
- Is it caused by:
  - Property owner action
  - Natural
    - Fallen trees/debris
    - Beaver activity

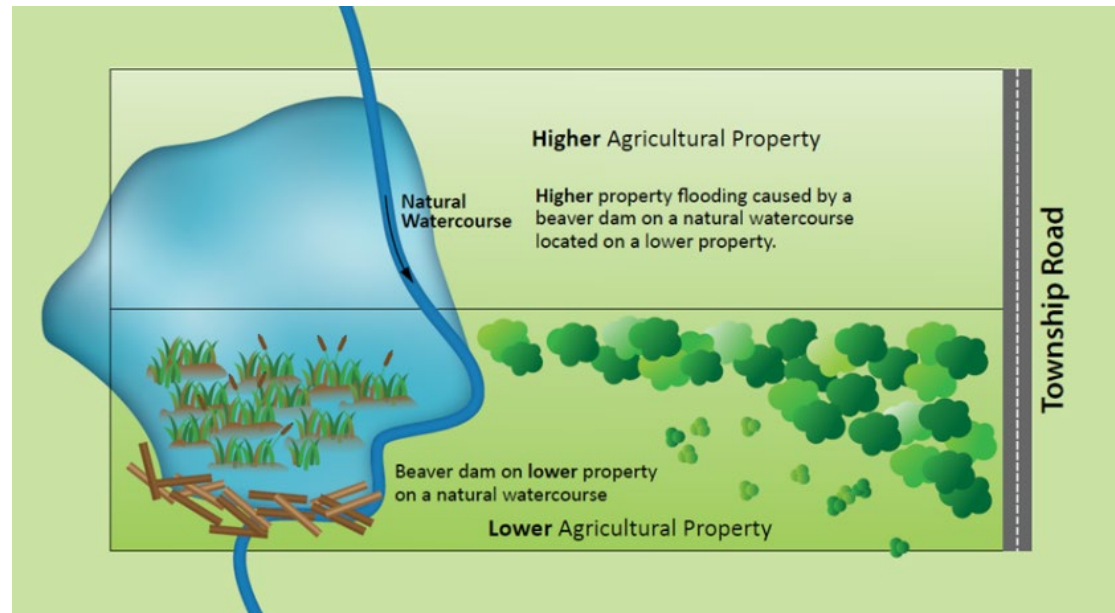




# Case Law – Natural Watercourses

Lynds vs. Runge  
(B.C.)

- Higher owner Lynds used land for potatoes and hay
- Beavers regularly built dams at two locations on the downstream Runge property
- From 1993-98, Lynds periodically went onto the Runge property to remove the dams (no permission)
- Relations deteriorated; Lynds was told to stay off the Runge land; beaver activity was not controlled
- Flooding of agricultural land occurred and Lynds sued Runge for damages



# Case Law – Natural Watercourses

Lynds vs. Runge  
(B.C.)

## Court Decision

- Beaver dams were a natural occurrence on the watercourse
- “... there is no present obligation upon a landowner in Canada to alter a watercourse from its present and longstanding state in order that an adjacent landowner may make use of lands that are subject to historical seasonal flooding.”

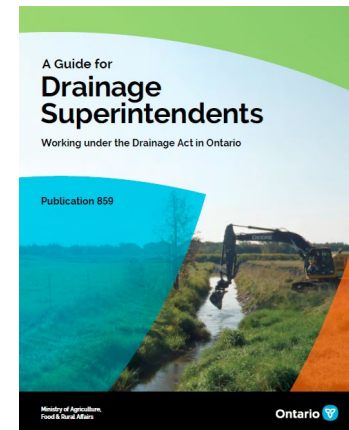
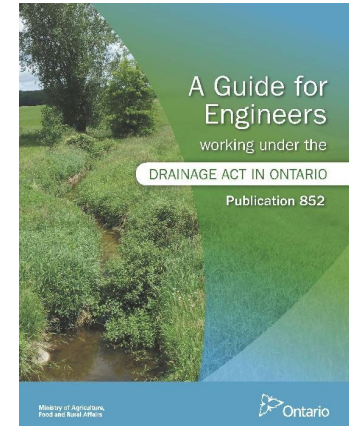
## Solutions

- Petition for a drain under the Drainage Act



# Resources


- A Guide for **Engineers** working under the Drainage Act in Ontario , Publication 852 is designed to help engineers navigate through today's challenges and opportunities in resolving drainage issues.
- <https://www.publications.gov.on.ca/a-guide-for-engineers-working-under-the-drainage-act-in-ontario-publication-852>
- A Guide for **Drainage Superintendents** Working under the Drainage Act in Ontario, Publication 859:
  - Focus on traditional stakeholders and approaches
  - Provide innovative guidance beyond regular maintenance and repair including green infrastructure and case studies.
- <https://www.publications.gov.on.ca/300763>
- Working on, A Guide for **Property Owners** involved with the Drainage Act



**DRAFT**



# Agricultural Information Atlas

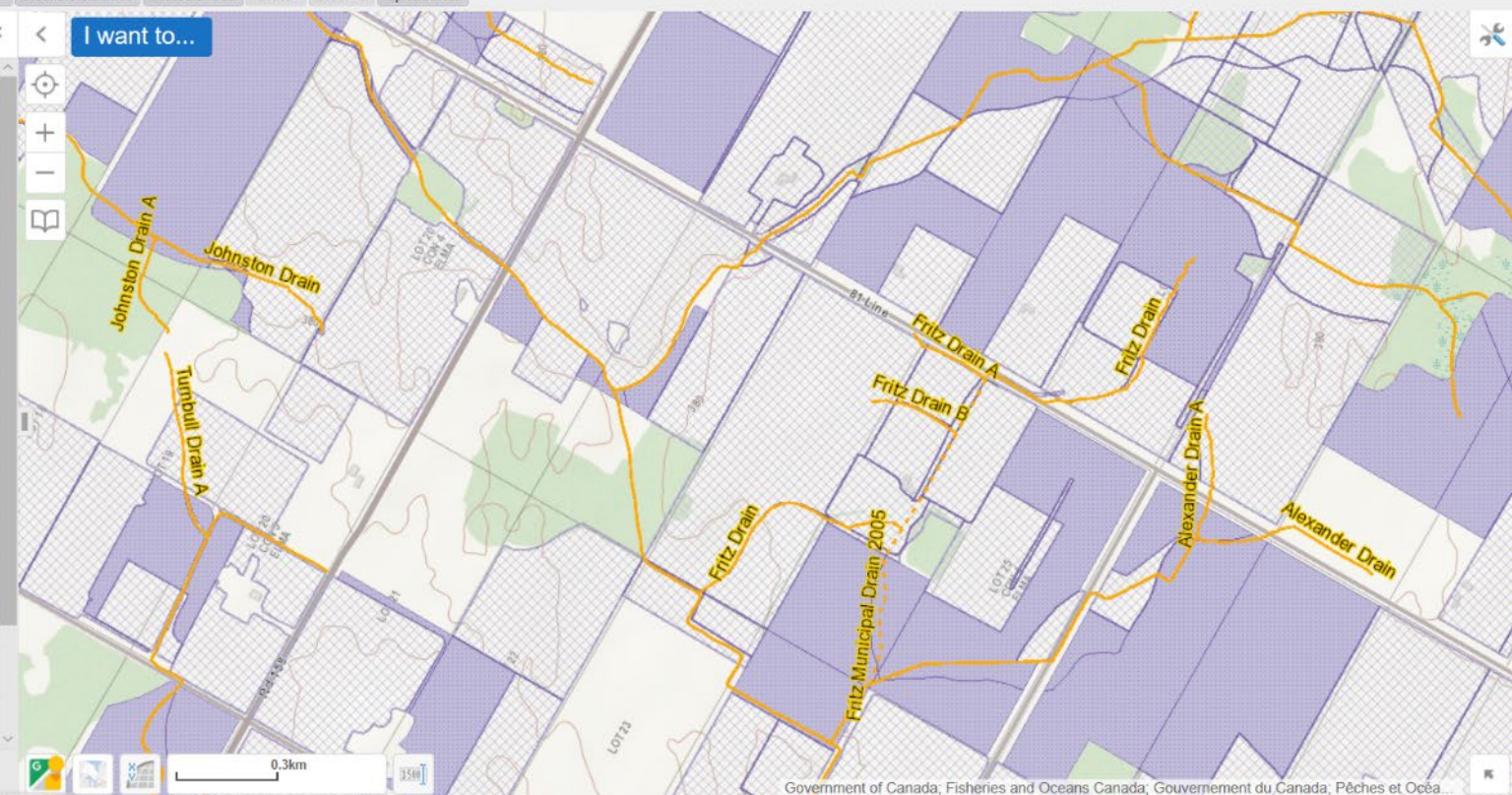
Ontario  Ministry of Agriculture, Food and Rural Affairs  
AgMaps [ Français ]

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Select Map Layers I want to...

- ☒ Operational Layers
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  - ☒ Administrative
  - ☒ Environment/Base Data
    - ☒ Constructed Drains
    - ☒ Agricultural Tile Drainage
    - ☐ Controlled Drainage
  - ☒ Ontario Soil Survey Complex
  - ☒ Watersheds
  - ☐ National Topographic Survey 1:50,000 Scale Grid
  - ☒ Source Water Protection Data
  - ☒ Climate and Crops
  - ☒ Department of Fisheries and Oceans
  - ☒ Wells
  - ☒ Derived Layers



Government of Canada, Fisheries and Oceans Canada; Gouvernement du Canada, Pêches et Océans  
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Website: <http://www.omafra.gov.on.ca/english/landuse/gis/portal.htm>

# Questions and Discussion



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