



Ministry of
Transportation and
Communications

MINISTRY DIRECTIVE

Program: Provincial

Highways

Directive: B-63

Issuing Authority: Executive Director, Highway Engineering Division

Date of Issue: 79 12 10 Effective Date: Immediate Revision Date: 87 06 01

TO: Executive Directors, Regional Directors, Directors, District Engineers, Regional Managers, Office Managers

SUBJECT:

Drainage Act - M.T.C. Policy and Procedures

ALTERNATIVE INDEX LISTING(S):

Drainage Works
Municipal Drains

This directive supersedes the previous version of Provincial Highways Directive B-63 dated 82 03 04.

REFERENCE

MTC Drainage Manual, Chapter A, Part 1 - Legal Aspects of Highway Drainage
Drainage Act, R.S.O. 1980, c. 126
Municipal Tax Assistance Act, R.S.O. 1980, c. 311
Drainage and Hydrology Section, Highway Design Office

PURPOSE

- (a) To clarify and document the Ministry's policy with respect to proceedings under the Drainage Act.
- (b) To present for guidance of district and regional staff the responsibilities and key activities in the initiation, review and approval of drainage works implemented under the Drainage Act within or affecting highway rights-of-way and other lands owned by the Ministry, in both organized and unorganized territory. The directive is not intended to provide a detailed summary of Drainage Act procedures.

PART A ORGANIZED TERRITORY

Part A refers to territory with municipal organization.

PAYMENT OF ASSESSMENTS

Section 26 of the Drainage Act places on road authorities all assessments for the increased cost of crossing a road. However, the Drainage Act is not binding on the Crown. Furthermore, assessment for the increased cost of crossing a highway is a tax and as such does not apply to this Ministry, since lands of the Crown are exempt from taxation. Subsection 61(5) provides that this assessment be paid by the municipality.

It has been established that costs under section 26 of the Drainage Act are payable in accordance with the Municipal Tax Assistance Act which is administered by the Subsidies Branch of the Ministry of Municipal Affairs (MMA). MTC will assist MMA in the examination of assessments levied under section 26.

FUNDAMENTAL POLICIES

- (1) Although not bound by the Drainage Act, this Ministry will cooperate with municipalities in support of any reasonable works under the Act including initial construction, regular maintenance and future improvements.
- (2) The Ministry will continue to make use of provisions of the Drainage Act for the purpose of procuring drainage of provincial highways or other property under the control of the Ministry.

OPERATIVE POLICIES

- (3) The term "Ministry" may be interpreted to mean the District Engineer or the regional Head, Planning and Design Section, at the discretion of the Regional Director.

- (4) Petition Drains (Drainage Act section 4)

It is the responsibility of regional and district staff to initiate or sign petitions for drainage.

The following considerations will apply.

- (a) Petitions initiated by others.

The District Engineer may sign such petitions only if the proposed drainage works would be of tangible benefit to the Ministry, and, even then, only as a last resort. For example, if the Ministry has advised an owner to proceed under the Drainage Act when no other outlet was available, and the owner cannot get sufficient signatures from other owners, the District Engineer, acting on behalf of the Ministry as a landowner, may sign if the Ministry can benefit from the proposed works.

Where MTC has lands other than right-of-way or patrol yards that may be significantly affected, the regional Head, Property Section should be consulted.

It should be noted that, by signing a petition, the Ministry might be responsible for part of the cost of the engineer's report even if the drain is not built (s.40).

- (b) Petition for a drainage works for a highway where no current work project exists.

Where the initiation of a petition may rectify a problem that affects a highway, the District Engineer has the authority to raise such a petition.

- (c) Petition for a drainage works for a highway where a current work project exists.

Where the initiation of a petition may rectify a problem that affects a highway and is encountered during the design of a work project, such a petition may be raised by the regional Manager, Engineering and Right of Way Office.

- (d) The Head, Drainage and Hydrology Section, Highway Design Office, Highway Engineering Division, has the authority to sign petitions as in (a), (b) and (c) above when so requested.

- (5) Requisition and Mutual Agreement Drains (s.3 and s.2, respectively)

It is the policy of this Ministry not to initiate Requisition Drains, section 3 of the Act. However, Mutual Agreement Drains, section 2, may be considered provided the agreement is between MTC and a municipality.

- (6) Relocation of a Drainage Works within a Highway Right-of-Way

Subsection 77(2) of the Drainage Act deals with relocating drainage works initially within or adjacent to the right-of-way upon the report of an engineer. Subsection 3 allows a written opinion rather than an engineer's report if the drainage works is to be relocated entirely within the right-of-way.

Where the Ministry wishes to relocate existing drainage works within a highway right-of-way, the Ministry may request the municipality to initiate such relocation under subsection 77(2). Under this subsection, the Ministry is responsible for all expenses incurred in the relocation.

- (7) This Ministry will not make use of appeal procedures provided by the Act, except in extreme circumstances where failure to do so would result in a grossly unfair assessment against the Ministry. Such appeals will be restricted to instances where a provisional bylaw has been passed and a local Court of Revision has revised the original assessment to the detriment of this Ministry. Prior to appealing, the regional Manager, Engineering and Right-of-Way Office and the District Engineer will discuss the circumstances surrounding the appeal with the Executive Director, Highway Engineering Division.

Where there is concern over such items as location, relocation of works off the highway right-of-way, design timing and assessments, MTC will confer with MMA and the municipality to achieve solutions which are satisfactory to all. Refer to procedure item (2)(d).

- (8) This Ministry will assist MMA in an advisory capacity on technical matters and on questionable assessments.

PROCEDURE

(1) Upon Receipt by the Municipal Clerk of a Petition

- (a) The municipal clerk notifies the Ministry of a site meeting.
- (b) Upon notification, and where the highway is likely to be substantially affected or assessed, the District Engineer or designated representative may attend the site meeting with the engineer appointed by the council, to offer suggestions and advice on special problems this Ministry may have.

If the R.O.W. is affected, the Ministry will forward an application form for an encroachment permit to the clerk of the municipality at the time of the meeting, or as soon as possible thereafter. The need for an early application by the municipality should be emphasized on this occasion. The regional Head, Property Section should be advised in cases where significant non-right-of-way Ministry property is affected.

(2) Upon Engineer's Report

- (a) The municipal clerk sends copies of reports to the appropriate MTC office when provincial roads or significant other MTC lands are assessed.

The engineer's report will be examined by the Ministry to determine whether consent in the form of an encroachment permit should be given to the municipality.

The following aspects of the proposed drainage works deserve special attention:

- feasibility of the overall scheme as it relates to the highway (the engineering),
- design details (culvert end area, obvert and invert elevations, specifications, standards, etc.),
- construction method,
- restoration of roadway and right-of-way,
- scheduling (timing of highway projects and encroachment work),
- costs assessed to the Ministry for benefit, outlet liability, injuring liability, crossing or special benefit,
- benefit/cost with regard to highway needs.

- (b) The Ministry will bring to the attention of the municipality any major deviations from the procedures of the Act, doubtful assessments levied against the highway, or omission of MTC requirements, and request appropriate amendments.

Assessments levied against lands of the Crown are paid by the municipality and are subject to a grant under the Municipal Tax Assistance Act administered by MMA. In certain cases it may be advisable to discuss problems first with MMA and/or the Ministry of Agriculture and Food (MAF).

- (c) Immediately upon completion of the above review the District Engineer will forward a memorandum to the Subsidies Branch, MMA, to notify that Ministry of the project. By this means MTC will formally advise MMA of our agreement with, or concerns about the proposed works and the assessments against the highways. In the event of potential problems, MTC will brief MMA on issues of contention and, where

possible, provide recommendations on engineering matters, bearing in mind that the technical services are primarily the responsibility of the engineer appointed under the Act. (Often the engineer's report arrives late at MTC, and in that event the Ministry should communicate with MMA via telex or faxgram). A copy of this correspondence should be mailed to the Drainage Coordinator, MAF, Soil and Water Management Branch.

- (d) If the Ministry and the municipality fail to reach agreement on some major aspect of the report, the Ministry will alert the Subsidies Branch of MMA and request that they make direct contact with the municipality in an effort to achieve a satisfactory solution. MMA may choose to press for a solution prior to construction of the drain or consideration of the grant.
- (e) When MTC is in agreement with the proposed works and associated details, the District Engineer will approve the municipal encroachment permit application and issue a permit which will contain the following additional stipulation.

"Notwithstanding any other provision of this permit, the Ministry may carry out such maintenance or alterations of the encroachment as may be required for the safe or proper operation of the highway as determined by the Ministry."

Where significant other MTC lands are involved, the District Engineer shall advise the regional Head, Property Section of the location of the proposed drainage works.

- (f) During and after completion of construction of drainage works within the right-of-way, the site will be examined by the District Engineer to ensure that:
 - the facility has been built in accordance with the original design approved by the Ministry,
 - the work was carried out in conformity with Ministry standards and specifications, and
 - the roadway and right-of-way or other MTC lands have been restored to their original condition to the satisfaction of the Ministry.
 - (g) Assuming that all concerns have been resolved via steps (b), (c), and (d), the form "Application for Payment of Drainage Assessments" (see Attachment 1) received from the municipality will be endorsed by the District Engineer and forwarded to the Subsidies Branch, MMA; a copy of the endorsed application will also be sent to the municipality.
- (3) Upon Engineer's Written Opinion (subsection 77(3))

This Ministry may relocate a drainage works within the highway right-of-way upon an engineer's written opinion rather than a report, in accordance with subsection 77(3). The Ministry will bear the full cost of the work.

If the engineer recommends in his/her written opinion against the Ministry's proposal, and the Ministry cannot meet the engineer's objections but still wishes to relocate the drain, the Ministry may approach the municipality to initiate relocation under subsection 77(2). Procedure (2) ("Upon Engineer's Report"), will then apply.

PART B UNORGANIZED TERRITORY

Part B refers to territory without municipal organization.

BACKGROUND

To assist in the construction of agricultural drains in areas without municipal organization by the payment of grants for road crossings, an Order-in-Council was approved 80 06 11 by the Lieutenant Governor in Council to establish the "Northern Ontario Drainage Assistance Program" (attachment 3).

Clause 2 of the Order-in-Council states that MTC will supply plans, specifications, contracting and supervision of the work on road crossings. Based on the expectation that such drainage works will not occur frequently and will not cause a high demand of MTC staff, MTC will absorb its own contract preparation and inspection costs. Alternatively, MAF may choose to hire a drainage engineer to perform these tasks, with the proposed works subject to MTC approval.

Clause 4 sets out the payment of the grant by MAF upon satisfactory completion of the work within the highway right-of-way.

POLICY AND PROCEDURE

- (1) Although not bound by the Drainage Act, this Ministry will cooperate with MAF in support of any reasonable drainage works under the Act in unorganized territory.
- (2) Upon being notified by MAF of an application for a drainage works crossing or encroaching upon a highway right-of-way in an unorganized territory, this Ministry will review the proposed project either with or without MAF representatives, to assess MTC's requirements.
- (3) MTC will arrange for construction of the portion of the drain within the highway right-of-way. Work outside the right-of-way will be done by others.

The work can be carried out by

- (a) day labour, or
 - (b) a small contract prepared and administered by MTC (similar to an invitational bid contract, for example), or
 - (c) other suitable means.
- (4) Since the work must be completed to MAF's satisfaction, this Ministry shall consult the Drainage Coordinator of MAF prior to contract award (or start of work, in the case of day labour) and again prior to acceptance of the completed work.

- (5) The method of payment for the work is optional:
- (a) the Ministry may endorse the Contractor's billing and forward it to MAF's Drainage Coordinator for direct payment to the Contractor; or
 - (b) the Ministry may pay the Contractor and be reimbursed by MAF; or
 - (c) if the work was done by day labour, the Ministry may bill MAF for a reasonable amount.
- (6) If MAF hires a drainage engineer for this work, (3), (4) and (5) above are not applicable. In these instances, the District Engineer should advise the drainage engineer that an encroachment permit for the project is required.

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Attachments

- 1 - MMA information
- 2 - Delegation of authority.
- 3 - Order-in-Council No. 1673/80.

Attachment # 1

MINISTRY OF MUNICIPAL AFFAIRS
SUBSIDIES BRANCH
777 BAY STREET, 12TH FLOOR
TORONTO, ONTARIO
M5G 2E5
(416) 585-6184

The Municipal Tax Assistance Act

Payment of Assessments under the Drainage Act

1. Reports:

Section 41(1)(d) of the Drainage Act, R.S.O. 1980, c. 126 as amended provides that a copy of the engineer's report be sent to owners of all lands and roads as shown by the last revised assessment roll who in any way may be affected by the drainage work. The Subsidies Branch should therefore be receiving copies of all reports relating to drains for which lands owned by the Province are to be assessed.

Although provincial highways and rights-of-way will not appear on the assessment roll, copies of all reports in which roads owned by the Province are to be assessed should also be provided to Subsidies Branch. In addition, copies should be forwarded to the regional and district offices of the Ministry of Transportation and Communications.

2. Special Assessments:

Section 26 of the Drainage Act provides that a road authority or public utility shall be assessed for any increase in the cost of a drainage work caused by the existence of the road authority or public utility. As a result, the actual increased cost incurred because of the need, for example, to cross a road, railway, or pipeline, should be charged to the affected road authority or public utility and not to the drainage area as a whole.

This means that the municipality will have to ensure that the actual cost of that portion of the work is segregated in order to determine the proper assessment. Subsidies Branch shall not pay special assessments upon provincial highways which cannot be substantiated, nor shall Subsidies Branch pay a portion of a special assessment which should have been imposed upon some other road authority or public utility.

By the same token, special benefits under Section 24 of the Act should be assessed upon the benefiting property only and should not be assessed upon all lands and roads otherwise liable for the cost of a drainage work.

Revised 87.03.16

Attachment # 1

3. Application for Payment:

Attached is a sample of an application for payment of drainage assessments, supplies of which are available upon request. When applying for payment of assessments with respect to work undertaken with an engineer's report, please attach a copy of the final, amended schedule of assessments. When applying for payment of assessments for maintenance or repairs undertaken without a report, it would be appreciated if you would also attach a copy of the narrative portion of the report describing the manner in which the costs of maintenance are to be charged.

You will note that if the assessed property is owned by the provincial Ministry of Transportation and Communications (MTC), the application should be sent to the appropriate MTC district office. The District Engineer will certify that the work was completed in accordance with Ministry specifications and forward the application to Subsidies Branch for payment.

All drainage assessments upon lands and roads owned by the Province will be commuted in one payment. As a result, no annual installments will be paid, and such assessments should not be taken into account when determining your debenturing needs. Please keep this in mind when preparing a final schedule of assessments.

Revised 87.03.16



Attachment # 1
 Ministry of
 Municipal
 Affairs

Subsidy
 Branch
 777 Bay Street
 Toronto, Ontario
 M5G 2E5
 (416) 595-6184

Application - Payment of Drainage Assessments
 The Municipal Tax Assistance Act

Instructions: Please submit in duplicate and attach one copy of the final schedule of assessments and one copy of the most recent report, if not already provided.

Note: If the assessed property is owned by the Ministry of Transportation and Communications (MTC), please complete and forward this application to the appropriate district office.

Municipality

County/Region

Name of Drain

Nature of Work Undertaken		Date Drainage Works Completed
<input type="checkbox"/> Construction	<input type="checkbox"/> Improvement	<input type="checkbox"/> Maintenance and Repair
		Estimated \$
		Actual \$
Total Cost		
Provincial Assessment*		
*including a special assessment of		

Required Property Information

Name of Ministry Assessed

Roll Number and Legal Description of Property Assessed

Certificate of Treasurer

I certify, that the information set forth in this application for grant is correct and that the estimated costs and assessments described above have been extracted from the most recent report prepared with respect to this drainage work, dated _____, and that the actual costs, which are reflected in the books of account of the municipality, have been incurred and have been assessed in accordance with both the report and the provisions of the Drainage Act.

Signature of Treasurer	Date
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For MTC Use Only

I confirm that this drainage work has been undertaken and completed in a manner satisfactory to this Ministry and that the portion of the cost assessed upon the highway described above is both proper and acceptable.

Signature of District Engineer	Date
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Parts: 1 & 2 - Subsidies Branch; 3 - M.T.C.; 4 - Municipality.



Office of the
Minister

Ministry of
Transportation and
Communications

Ferguson Block
Queen's Park
Toronto, Ontario
416/965-2101

MEMORANDUM TO: Mr. D.G. Hobbs
Deputy Minister

87 05 29

RE: Delegation of Authority

Pursuant to Subsection 25(1) of The Public Transportation and Highway Improvement Act, I hereby authorize the District Engineer and the regional Manager, Engineering and Right-of-Way Office of the area concerned, and the Head, Drainage and Hydrology Section of the Ministry, as persons authorized to initiate and carry out proceedings under any Act for the purpose of procuring proper drainage for the King's Highway.

Pursuant to Subsection 25(2) of The Public Transportation and Highway Improvement Act, I hereby designate the District Engineer and the regional Manager, Engineering and Right-of-Way Office of the area concerned, and the Head, Drainage and Hydrology Section of the Ministry, as engineers of the Ministry authorized to carry out the provisions of any Act for the purpose of procuring proper drainage for the King's Highway or other property under the control of the Ministry.

A handwritten signature in cursive script, appearing to read "Ed Fulton".

Ed Fulton
Minister

- MAF's Drainage Coordinator for direct payment to the Contractor; or
- (b) the Ministry may pay the Contractor and be reimbursed by MAF; or
 - (c) if the work was done by day labour, the Ministry may bill MAF for a reasonable amount.
- (6) If MAF hires a drainage engineer for this work, (3), (4) and (5) above are not applicable. In these instances, the District Engineer should advise the drainage engineer that an encroachment permit for the project is required.

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