

1960

## c 109 Ditches and Watercourses Act

Ontario

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## CHAPTER 109

**The Ditches and Watercourses Act****1. In this Act,**Interpre-  
tation

- (a) "clear days" means exclusive of the first and last days of any number of days prescribed;
- (b) "construction" means the original opening or making of a ditch by artificial means;
- (c) "county" includes a district;
- (d) "county court" includes a district court;
- (e) "ditch" means a drain opened or covered wholly or in part, and whether or not in the channel of a natural stream, creek or watercourse, and includes the work and material necessary for bridges, culverts, catch-basins and guards;
- (f) "engineer" means the person or firm appointed by a municipal council as engineer to carry out this Act, and any member of the firm may act as engineer if his name is included in the by-law appointing the engineer;
- (g) "judge" means the senior, junior or acting judge of the county court of the county in which the lands, in respect of which the proceedings under this Act are taken, are situate;
- (h) "maintenance" means the preservation and keeping in repair of a ditch;
- (i) "non-resident" means a person who does not reside in the municipality in which his land, affected by proceedings under this Act, is situate;
- (j) "owner" means the owner or possessor of any real or substantial interest in land, whether held in fee simple, fee tail, for one or more life or lives or for a term of years not less than ten, and includes a lessee for a term of not less than five years with an option

to purchase, the personal representative of a deceased owner, the committee of a mentally incompetent owner, the guardian of an infant owner, any person entitled to sell and convey the land, an agent under a general power of attorney authorizing the appointee to manage and lease the land, and a municipal corporation as regards any highway or other land under its jurisdiction. R.S.O. 1950, c. 105, s. 2.

Certain Acts  
not affected

**2.** This Act does not affect the Acts relating to municipal or government drainage work. R.S.O. 1950, c. 105, s. 1.

Drainage of  
lands for  
mining or  
manufacturing pur-  
poses

**3.—(1)** This Act applies to the drainage, among other land, of land for mining or manufacturing purposes, so as to enable the owner thereof to take proceedings thereunder, but in such case the engineer, in default of agreement, shall determine whether the land of other owners through which the ditch may pass shall be called upon to contribute to the construction of the ditch, and whether and to what extent such land may require drainage or will be benefitted thereby.

Lands of  
other  
owners

**(2)** Where the engineer finds that the land of such other owners does not require drainage and that the ditch will not substantially benefit such land, he shall determine what compensation the owner of the land used for mining or manufacturing purposes shall make for any injury caused to such other owners by reason of the ditch passing through their land, but, if such land will be substantially benefited by such drainage, he shall determine the extent of the benefit and shall deduct it from the amount of compensation so to be made, or shall take the proceedings provided for by subsection 3 of section 15, as the case may require. R.S.O. 1950, c. 105, s. 3.

Appoint-  
ment of  
engineer

**4.—(1)** The council of every local municipality shall by by-law (Form 1) appoint a civil engineer, Ontario land surveyor or other competent person to be the engineer to carry out the provisions of this Act, and he shall be and continue an officer of the corporation until another engineer is appointed in his stead who may continue any work already undertaken, and, in case another engineer is appointed, the clerk of the municipality forthwith thereafter shall give notice of such appointment to the former engineer.

Fees of  
clerk and  
engineer

**(2)** The council shall also by by-law provide for the payment to the clerk of the municipality of a reasonable remuneration for services performed by him in carrying out the provisions of this Act, and shall also by by-law fix the charges to be made by the engineer for services performed by him under this Act.

(3) Every engineer before entering upon his duties shall take and subscribe the following oath and shall file it with the clerk of the municipality:

In the matter of *The Ditches and Watercourses Act*.

I (*name in full*) of the.....of.....in the county (*or district*) of....., engineer (*or surveyor, or as the case may be*), make oath and say (*or do solemnly declare and affirm*) that I will to the best of my skill, knowledge, judgment and ability, honestly and faithfully and without fear of, favour to, or prejudice against, any owner or owners perform the duties from time to time assigned to me in connection with any work under *The Ditches and Watercourses Act*, and make a true and just award thereon.

Sworn, etc.

R.S.O. 1950, c. 105, s. 4.

5.—(1) Every ditch constructed under this Act shall be continued to a sufficient outlet, but shall not pass through or into more than seven original township lots, exclusive of any part of the ditch on or across a road allowance, unless the council of any municipality, upon the petition of a majority of the owners of all the land to be affected by the ditch, passes a resolution authorizing the extension thereof through or into any other lots within such municipality, or any adjoining municipality, and upon the passing of such resolution the proposed ditch may, subject to subsection 2, be extended in pursuance of such resolution.

(2) No ditch, the whole cost of which according to the estimate of the engineer or the agreement of the parties will exceed \$2,500, shall be constructed under this Act. R.S.O. 1950, c. 105, s. 5.

6. The land, the owners of which may be made liable for the construction of a ditch under this Act, shall be that lying within 150 rods from the sides and point of commencement of the ditch. R.S.O. 1950, c. 105, s. 6.

7.—(1) The owner of land who requires the construction of a ditch thereon, before filing with the clerk of the municipality the requisition provided for by section 12, shall serve upon the owners or occupants of the other land to be affected a notice in writing (Form 2) signed by him and naming a day and hour and also a place convenient to the site of the ditch, at which all the owners are to meet and estimate the

cost of the ditch and agree, if possible, upon the apportionment of the work and supply of material for construction among the several owners according to their respective interests therein, and settle the proportions in which the ditch shall be maintained.

Service of  
notice

(2) The notices shall be served not less than twelve clear days before the time named therein for meeting.

Application  
to set aside  
proceedings  
where re-  
quisitioner  
is not  
owner

(3) The owner or occupant of any land to be affected who has been served with the notice mentioned in subsection 1 may within five clear days after service of the notice upon him apply to the judge to set aside the proceedings on the ground that the person who commenced them is not an owner within the meaning of this Act.

Presump-  
tion of  
ownership,  
when con-  
clusive

(4) If such application is not made or, if made, is unsuccessful, the right of the person who commenced the proceedings to do so shall not thereafter be open to question, but shall be conclusively presumed. R.S.O. 1950, c. 105, s. 7.

Form of  
agreement,  
filing

8. If an agreement is arrived at by the owners, it shall be reduced to writing (Form 3) and signed by all the owners, and shall within six days after the signing thereof be filed with the clerk of the municipality in which the land, the owner of which requires the ditch, is situate, but, if the lands affected lie in two or more municipalities, the agreement shall be in as many parts as there are municipalities and one part shall be filed with the clerk of each municipality, and the agreement may be enforced in the same manner as an award of the engineer as hereinafter provided. R.S.O. 1950, c. 105, s. 8.

Informalities  
not to  
invalidate  
proceedings

9. Want of strict compliance with sections 7 and 8 does not avoid any proceedings taken or agreement made and entered into thereunder, or invalidate any subsequent proceedings taken thereunder, if such notices have been duly served and the apportionment of the work and supply of material for construction among the several owners and settlement of the proportions in which the ditch shall be maintained are set forth in the agreement, and any such agreement may be amended so as to conform to this Act, with the consent in writing of the parties thereto, filed in the same manner as the agreement, or by order of the judge on an appeal under this Act. R.S.O. 1950, c. 105, s. 9.

Adjourn-  
ing meeting  
for purpose  
of adding  
parties

10. If at the meeting of owners it appears that the notice required by section 7 has not been duly served, the owners present at such meeting may adjourn the meeting to some subsequent day to enable the necessary notices to be served, and,

if such notices have been served, the adjourned meeting is a sufficient compliance with this Act. R.S.O. 1950, c. 105, s. 10.

**11.** The head of the council of any municipality may sign the agreement and his signature is binding upon the corporation. R.S.O. 1950, c. 105, s. 11.

Signature on behalf of municipality

**12.** If an agreement is not arrived at by the owners at the meeting or within five days thereafter, the owner requiring the ditch may file with the clerk of the municipality in which his land is situate a requisition (Form 4), naming therein the several parcels of land that will be affected by the ditch and the respective owners thereof, and requesting that the engineer appoint a time and place in the locality of the proposed ditch, at which he will attend to make an examination as hereinafter provided. R.S.O. 1950, c. 105, s. 12.

Requisition for appointment by engineer when no agreement arrived at

**13.—(1)** The clerk, upon receiving the requisition, shall forthwith transmit a copy of it by registered mail to the engineer.

Notice to engineer

(2) Upon the receipt of the copy by the engineer, he shall give to the clerk not less than ten clear days notice in writing by registered mail addressed to him at his last known address of the time when and the place where he will attend in response to the requisition.

Notice to clerk of appointment

(3) On the receipt of the notice of the appointment from the engineer, the clerk shall file it with the requisition, and shall forthwith send, by registered mail, a copy of the notice of appointment to the owner making the requisition who shall, at least four clear days before the time so appointed, serve upon the other owners named in the requisition a notice (Form 5) requiring their attendance at the time and place fixed by the engineer, and shall, after serving such notice, endorse on one copy thereof the time and manner of service and leave it with the engineer not later than the day before that fixed in the notice of appointment. R.S.O. 1950, c. 105, s. 13.

Notice to all parties

**14.—(1)** Notices shall be served personally or by leaving them at the usual place of residence of the owner or occupant with a grown-up person residing there, and, in the case of non-residents, upon the agent of the owner or by registered mail addressed to the owner at the post office nearest to his last known place of residence, and, where his place of residence is not known, the notice may be served in such manner as the judge directs.

Mode of serving notices

Occupant  
to notify  
owner

(2) An occupant, not the owner of the land, notified in the manner provided by this Act, shall immediately notify the owner thereof and, if he neglects to do so, is liable for all damages suffered by the owner by reason of such neglect. R.S.O. 1950, c. 105, s. 14.

Examina-  
tion by  
engineer

**15.**—(1) The engineer shall attend at the time and place appointed by him and shall examine the locality, and, if he deems it proper or if requested by any of the owners, may examine the owners and their witnesses present and take their evidence, and may administer an oath to any owner or witness examined by him.

Adjourn-  
ment to  
serve other  
owners

(2) If upon examining the locality the engineer is of opinion that the land of owners upon whom notice has not been served will be affected by the ditch, he shall adjourn the proceedings to a day named and direct a notice of the adjourned meeting similar to that required by section 13 to be served on such owners by the owner making the requisition for the purpose of allowing such owners to be present and to be heard upon the examination and taking of evidence.

Further  
proceed-  
ings by  
engineer  
making  
award

(3) The engineer may adjourn his examination and the hearing of evidence from time to time and if he finds that the ditch is required he shall, within sixty days after his first attendance, make his award in writing (Form 6) specifying clearly the location, description and course of the ditch, its commencement and termination, apportioning the work and the furnishing of material among the lands affected and the owners thereof according to his estimate of their respective interests in the ditch, fixing the time for performance by the respective owners, apportioning the maintenance of the ditch among all or any of the owners so that as far as practicable and equitable each owner shall maintain the portion on his own land, and stating the amount of his fees and the other charges and by whom they shall be paid.

Certificate  
of engineer  
as to fees

(4) If the engineer finds that the ditch is not required or is impracticable or cannot be constructed under this Act, or if the owner filing the requisition neglects or refuses to serve notices as directed by the engineer under subsection 2, the engineer within the time prescribed in subsection 3 shall file with the clerk a certificate stating that he refuses to make an award, his reasons for such refusal, the amount of his fees and the other charges and by whom they shall be paid.

Notice of  
certificate  
of refusal

(5) Where the engineer files a certificate of refusal under subsection 4, the clerk shall notify the owner who made the requisition and the other owners named in the requisition,

by registered mail or personal service, of the filing of the certificate of refusal, and shall keep a record of the persons to whom he sent notices, the addresses to which the notices were sent, and the date upon which the notices were mailed or personally served.

(6) The period prescribed for the engineer to make his award shall be exclusive of the time required to obtain the approval of the works or the specifications or plans thereof by the Ontario Municipal Board or the Board of Transport Commissioners for Canada, where such approval is necessary. Time for making award not to include certain periods

(7) Where a ditch or a part thereof is to be covered, the engineer shall in his award specify the kind of material to be used in the covered part. Material for covering ditch

(8) The engineer and his assistants, when engaged in the performance of their duties under this Act during or after the examination of the locality, may pass over, measure along, ascertain the bearings of any line, plant stakes, take levels and do such work as they deem necessary for the performance of the work on the land of any person, doing no unnecessary damage thereto, without being guilty of trespass or otherwise incurring liability. Powers of engineer

(9) The engineer in making his survey shall establish sufficient bench marks or permanent levels by which a ditch may be governed, and shall also in his award sufficiently record the descriptions, locations and elevations of every bench mark or permanent level by which a ditch is to be governed, and whether such bench marks or permanent levels were established by him or by some other engineer. Bench marks

(10) Every person who interferes with or obstructs the engineer or his assistants in the exercise of the powers conferred by subsection 8 or interferes with, removes or destroys a bench mark or permanent level mark established under subsection 9 is guilty of an offence and on summary conviction is liable to a fine of not more than \$100. R.S.O. 1950, c. 105, s. 15. Penalty for interference with work or bench marks of engineer

**16.** Where rock cutting or blasting is necessary, if the engineer is of opinion that it can be done more conveniently or less expensively by letting the work by tender or otherwise by public competition than if it were done by the owners, he may by his award direct that it be so let, and in that case he shall by the award fix and determine the part or proportion of the cost of the work that each of the owners is to pay. R.S.O. 1950, c. 105, s. 16. Rock cutting or blasting



Engineer  
may relieve  
person not  
benefited

**17.** If the engineer is of the opinion that the land of any owner will not be sufficiently affected by the construction of the ditch to make him liable to perform any part thereof, and that it is or is not necessary, as the case may be, to construct the ditch across or into his land, he may by his award relieve such owner from performing any part of the work of the ditch and may place its construction on the other owners, and any person carrying out the provisions of the award upon the land of the owner so relieved is not a trespasser if he causes no unnecessary damage, and he shall replace any fences opened or removed by him. R.S.O. 1950, c. 105, s. 17.

Award,  
plan, etc.

**18.—(1)** The award and any plan, profile and specifications of the ditch shall be in as many parts as there are municipalities in which land affected by the award is situate.

Filing  
award, etc.

**(2)** The engineer forthwith after making the award shall file one part thereof and of any plan, profile or specifications with the clerk of each of the municipalities, and the same may be given in evidence in any legal proceedings by a copy certified by the clerk.

Notice to  
persons  
affected

**(3)** The clerk, upon the filing of the award, shall notify each of the persons affected thereby within the municipality of which he is clerk, by registered mail or personal service, of the filing of the award and the part of the work to be done and material to be furnished by the persons so notified as shown by the award, and shall keep a book in which he shall record the names of the persons to whom he sent notices, the addresses to which they were sent, and the date upon which they were mailed or personally served.

Filing of  
documents

**(4)** The clerk shall index and carefully file in a safe place all agreements and awards made under this Act. R.S.O. 1950, c. 105, s. 18.

Powers of  
engineer  
of municipi-  
ality in  
which pro-  
ceedings  
commenced

**19.** If the land affected by the ditch is situate in two or more municipalities, the engineer of the municipality in which proceedings were commenced may continue the ditch into or through so much of the land in any other municipality as is found necessary, but within the limit of length hereinbefore provided, and all proceedings authorized by this Act shall be taken and carried on in the municipality in which the proceedings were commenced. R.S.O. 1950, c. 105, s. 19.

Appeals  
from award  
to county  
judge

**20.—(1)** Any owner affected by the award, within fifteen clear days from the date of the mailing or service of the last of the notices of the filing of the award, may appeal therefrom to the judge.

(2) The appellant shall serve upon the clerk of the municipality in which the proceedings were commenced a notice in writing of his intention to appeal, shortly setting forth the grounds of appeal. Notice of appeal

(3) The clerk, after the expiration of the time for appeal, shall transmit by registered mail or deliver a copy of the notice or notices of appeal and a certified copy of the award and the plans or specifications to the judge, who shall forthwith, upon the receipt thereof, notify the clerk of the time he appoints for the hearing of the appeal, and shall fix the place of hearing at the town hall or other place of meeting of the council of the municipality in which the proceedings were commenced, unless for greater convenience and to save expense he fixes some other place. Clerk to notify judge, and judge to fix time and place for hearing

(4) The judge may order such sum to be paid by the appellant to the clerk as will be a sufficient indemnity against the costs of the appeal. Indemnity against costs of appeal

(5) The clerk upon receiving notice from the judge shall forthwith notify the engineer and all parties interested in the manner provided for the service of notices. Notice to engineer and all parties

(6) An appellant may have the land inspected by any other engineer or person who, for such purposes, may enter upon the land, but shall do no unnecessary damage. Inspection of premises by another engineer

(7) The clerk to whom notice of appeal is given shall be the clerk of the court and shall record the proceedings. Clerk of the court

(8) It is the duty of the judge to hear and determine all the appeals within two months after receiving notice thereof from the clerk, or within such further period as, on hearing the parties, he deems necessary, as provided by subsection 9, but no proceedings under this Act are invalid by the failure of the judge to hear and determine the appeal within such period. Judge to hear and determine within two months

(9) The judge may examine parties and witnesses on oath and may inspect the land and may require the engineer to accompany him, and may alter or affirm the award and correct any errors therein. Powers of judge on appeal

(10) If the award is affirmed or altered, the costs of the appeal shall be in the discretion of the judge, but, if set aside, he may order payment of the costs mentioned in the award, and the costs of appeal by the parties to the award, or any of them, as to him seem just, and may fix the amount of such costs. Costs of appeal

Depriving  
engineer of  
fees when  
guilty of  
misconduct

(11) If the judge finds that the engineer has knowingly and wilfully favoured any one or more of the parties to the proceedings or has neglected his duty, he may direct that the engineer be deprived of all fees in respect of the award, or of such part thereof as the judge deems proper, but this does not deprive any party to the proceedings of any remedy he otherwise has against the engineer.

Fees and  
disburse-  
ments of  
judge

(12) The judge is entitled to \$5 a day and necessary travelling expenses for holding a court for the trial of appeals, including the inspection of the land, which charge is part of the costs of the appeal.

Enforce-  
ment of  
award as  
amended

(13) The order of the judge shall be filed with the clerk, and the award as altered or affirmed and the order of the judge as to costs may be enforced in the same manner as the award of the engineer, and the time for the performance of the award shall be computed from the date of the judgment on the appeal.

Notice to  
other clerks  
and owners

(14) The clerk shall immediately after the hearing send by registered mail to the clerk of any other municipality in which land affected by the ditch is situate a certified copy of the changes, if any, made in the award by the judge which shall be filed with the award, and each clerk shall forthwith, by registered mail, notify every owner within his municipality of any change made in the work and material assigned to such owner.

Notice of  
setting aside

(15) If the award is set aside, the clerk shall forthwith notify the fact to the clerk of every other municipality in which land affected by the award is situate. R.S.O. 1950, c. 105, s. 20.

Appeal from  
refusal of  
award

**21.—**(1) Where the engineer refuses to make an award because the ditch is not required or is impracticable or cannot be constructed under this Act, any owner affected by the refusal, within fifteen clear days from the date of the mailing or service of the last notice under subsection 5 of section 15, may appeal therefrom to the judge.

Judgment  
on appeal

(2) Upon the hearing of the appeal, the judge may dismiss the appeal or may allow the appeal and direct the engineer to make an award in the manner provided in subsection 3 of section 15.

Application  
of sections  
20, 22-25

(3) Except where inconsistent with this section, sections 20, 22, 23, 24 and 25 apply to an appeal under this section, and for the purposes of those sections the certificate of refusal of the engineer shall be deemed to be an award.

(4) Where the judge dismisses the appeal, there is no appeal from his judgment to the drainage referee. R.S.O. 1950, c. 105, s. 21. Judgment dismissing appeal final

**22.** No award shall be set aside for want of form only or for want of strict compliance with this Act, and the judge, instead of setting aside the award, may amend it or the other proceedings or may refer the award back to the engineer, with such directions as the judge deems necessary. R.S.O. 1950, c. 105, s. 22. Judge may amend or refer back award

**23.** An award, after the time limited for an appeal to the judge and after the determination of appeals, if any, by him where the award is affirmed, is valid and binding to all intents and purposes notwithstanding any defect in form or substance either in the award or in any of the proceedings prior to the making of the award. R.S.O. 1950, c. 105, s. 23. When award to be binding notwithstanding defects

**24.** On an appeal from an award, the judge possesses all such powers for compelling the attendance of and for the examination on oath of all parties and other persons that belong to or might be exercised by him in the county court. R.S.O. 1950, c. 105, s. 24. Powers of judge as to taking evidence

**25.—(1)** Upon an appeal, the clerk shall issue summonses to witnesses upon the application of any party to the proceedings or upon an order of the judge for the attendance of any person as a witness before him. Clerk may issue summonses to witness

(2) The summons has the same force and effect as a subpoena issued out of the county court. Effect of summons

(3) The fees to be allowed to witnesses shall be upon the scale of fees allowed to witnesses in an action in the division court. R.S.O. 1950, c. 105, s. 25. Witness fees

**26.—(1)** Subject to section 27, the corporation of the municipality in which the proceedings were commenced shall within ten days after the time for appealing or after the determination of the appeals, as the case may be, pay to the engineer and to the judge and all other persons the fees, charges and costs awarded or adjudged to be paid to them, and as respects the portion thereof payable by the owners of land situate within the municipality the same shall be forthwith repaid by the owners to the treasurer of the municipality. Payment of costs by municipality;

(2) If default is made by any owner in repaying the amount for which he is liable, the amount, with 7 per cent added thereto, forms a charge on his land and may be collected in Charge of same on land of owner

like manner as municipal taxes, and the council shall cause the same to be placed on the collector's roll and to be so collected.

Where lands  
are in more  
than one  
municipality

(3) Where the land affected by the award is situate within two or more municipalities, the corporation of each of the other municipalities shall forthwith, after notice in writing, repay to the corporation of the municipality in which the proceedings were commenced the sums for which the owners of land within its limits are liable, and subsection 2 applies in respect of the sums so repaid. R.S.O. 1950, c. 105, s. 26.

Letting rock  
cutting or  
blasting by  
tender

**27.** Where the award provides for rock cutting or blasting, the engineer shall let such work by tender or otherwise by public competition, and upon completion of it shall certify (Form 7) to the clerk of the municipality in which the proceedings were commenced the cost thereof, including his fees and the expenses, and the like proceedings shall be had and the like duties be performed in respect thereof as are provided for by sections 18 and 26, which apply *mutatis mutandis*. R.S.O. 1950, c. 105, s. 27.

Letting  
work on  
non-com-  
pliance with  
award

**28.—**(1) At the expiration of the time limited by the award for the completion of the ditch, the engineer shall inspect the ditch, and, if he finds the ditch or any part thereof not completed in accordance with the award, he may let the work and supply of material to the lowest bidder, who shall furnish security to the corporation, to be approved by the engineer, for the due performance thereof within a time to be fixed by the engineer, but the letting shall not take place,

- (a) until notice in writing of the intended letting has been posted up for four clear days in at least three conspicuous places in the neighbourhood of the place at which the work is to be done; and
- (b) until after four days from the sending of copies of the notice by registered mail to the last known addresses of the persons interested in the award who do not reside in the municipality or municipalities, as the case may be.

Extension  
of time for  
compliance

(2) If the engineer is satisfied of the good faith of any person failing in the performance of the award and there is good reason for the non-performance thereof, he may, in his discretion and upon payment of his fees and charges, extend the time for performance.

(3) Any owner in default who, after proceedings are begun to let the same, supplies the material and does the work is liable for the fees and expenses occasioned by his default, and the same form a charge on his land, and, if not paid by him after notice, the council shall pay the same on the certificate of the engineer, and shall cause the amount, with 7 per cent added thereto, to be placed on the collector's roll against the land of the person in default, to be collected in the same manner as municipal taxes.

Liability of person in default of doing work after proceedings begun

(4) The engineer may let the work and supply of material directed by the agreement or award, or any part thereof, a second time or oftener if it becomes necessary in order to secure its performance and completion. R.S.O. 1950, c. 105, s. 28.

Power to re-let

**29.**—(1) The engineer, within ten days after receipt of notice in writing of the supplying of material and completion of the work let, as mentioned in section 28, shall inspect the same, and, if he finds the material furnished and the work completed, shall so certify in writing (Form 8) to the clerk of the municipality by which he was appointed.

Certificates of engineer upon completion of work let

(2) Where lands situate within two or more municipalities are affected by the certificate of the engineer, the certificate shall be in as many parts as there are municipalities and one of such parts shall be transmitted by the engineer to the clerk of each of them.

Where lands affected in more municipalities than one

(3) Section 26 applies to the amount payable to the contractor and the fees and charges of the engineer as so certified. R.S.O. 1950, c. 105, s. 29.

Costs, fees and charges

**30.** If an owner during or after the construction of a ditch desires to avail himself thereof for the purpose of draining land other than that contemplated by the original proceedings, he may avail himself of this Act as if he were an owner requiring the construction of a ditch, but no owner shall make use of a ditch after construction unless under an agreement or award pursuant to this Act. R.S.O. 1950, c. 105, s. 30.

Use of ditch for other purposes

**31.** This Act applies to the deepening, widening, covering, improving or extending of any ditch heretofore or hereafter constructed and to the construction of a tile drain under or adjoining an open ditch as ancillary thereto. R.S.O. 1950, c. 105, s. 31.

Application of Act

Mainten-  
ance of  
ditches  
heretofore  
or hereafter  
constructed

**32.** A ditch, whether covered or open, constructed, or any creek or watercourse that has been deepened or widened, under any former Act respecting ditches and watercourses, or constructed, deepened, widened or covered under this Act, shall be maintained by the respective owners in such proportion as is provided in the original or any subsequent agreement or award, and the manner of enforcing the same is as hereinafter provided. R.S.O. 1950, c. 105, s. 32.

Enforcing  
mainten-  
ance

**33.—**(1) If an owner whose duty is to maintain any portion of a ditch neglects to maintain it in the manner provided by the agreement or award, any of the owners, parties to the agreement or award, whose land is affected by the ditch, may, in writing, notify the owner making default to have his portion put in repair within thirty days from the receipt of such notice, and, if the repairs are not made and completed within thirty days, the owner giving the notice may notify the engineer in writing to inspect the portion complained of.

Proceed-  
ings

(2) The inspection of the engineer and the proceedings for doing and completing the repairs required and enforcing payment of costs, fees and charges shall be as provided in the case of the non-completion of the construction of a ditch, but, if the engineer finds that there is no cause for complaint, he shall so certify, with the amount of his fees and charges, to the owner who complained and also to the clerk of the municipality, and such owner shall pay the fees and charges of the engineer, and, if not forthwith paid, the amount thereof shall be charged and collected in the same manner as is provided for in the case of other certificates of the engineer. R.S.O. 1950, c. 105, s. 33.

Proceed-  
ings for  
deepening,  
etc., by  
owner or  
person  
interested

**34.** An owner interested in or affected by a ditch heretofore or hereafter constructed which has not been constructed under any of the Acts referred to in section 32 or under this Act or under any Act relating to the construction of drainage work by local assessment, may take proceedings for the deepening, widening, extending, covering or repairing of such ditch in the same manner as for the construction of a ditch under this Act, but the extent of the work, the cost thereof and the assessment therefor shall not exceed the limitations imposed by sections 5 and 6. R.S.O. 1950, c. 105, s. 34.

Recon-  
sideration of  
agreement  
or award

**35.—**(1) Subject to subsection 2, an owner, party to the agreement or award, whose land is affected by a ditch, whether constructed under this Act or any other Act respecting ditches and watercourses, at any time after the expiration of two years or, in the case of a covered drain, of one year from the

completion thereof, may take proceedings for the reconsideration of the agreement or award under which it was constructed, and the proceedings shall be the same as are hereinbefore provided in the case of the construction of a ditch.

(2) If a ditch, after its construction, proves insufficient for the purposes for which it was constructed so as to cause an overflow of water upon any land along the ditch and damage to the land, any owner, party to the agreement or award, may at any time after the expiration of six months from the completion of the ditch take proceedings for the reconsideration of the agreement or award under which the ditch was constructed for the purpose of remedying the defect in that particular respect. R.S.O. 1950, c. 105, s. 35.

Where ditch after construction proves insufficient

**36.**—(1) Where a parcel of land is charged with maintenance in respect of a ditch constructed pursuant to an agreement or award, and one or more parts of the parcel are sold, the clerk of the municipality in which the parcel is situate shall direct the municipal engineer in writing to apportion the maintenance charged against the parcel among the parts into which the parcel is divided.

Subdivision of land charges with maintenance

(2) The clerk shall send a copy of the direction by registered mail to the owners of the parts into which the parcel is divided.

Notice to owners

(3) The engineer shall make the apportionment in writing and shall file it in the same manner as an award, and the apportionment is thereupon binding upon the parts into which the parcel is divided and the owners thereof. R.S.O. 1950, c. 105, s. 36.

Apportionment of maintenance

**37.** An engineer who wilfully neglects to make any inspection provided for by this Act for thirty days after he has received written notice to inspect is guilty of an offence and on summary conviction is liable to a fine of not less than \$5 and not more than \$10, and every such fine, when recovered, shall be paid over to the treasurer of the municipality in which the inspection should have been made. R.S.O. 1950, c. 105, s. 37.

Penalty for engineer failing to inspect

**38.** No action, suit or other proceeding lies or shall be taken for a mandamus or other order to enforce or compel the performance of an agreement or award or the completion of a ditch, but the same shall be enforced in the manner provided for in this Act. R.S.O. 1950, c. 105, s. 38.

Actions for mandamus, etc., not to lie



Forms to be  
supplied by  
municipality

**39.** It is the duty of the council of every municipality to keep printed copies of all the forms required by this Act and to supply the clerk with proper filing equipment for the safekeeping of all agreements and awards made under this Act. R.S.O. 1950, c. 105, s. 39.

Appeals to  
referee

**40.—(1)** Any owner affected by an award under this Act may appeal from the judgment of the judge to the referee appointed under the drainage laws of Ontario, whose judgment is final and conclusive, but no such appeal lies unless leave is given by the referee upon an application made to him within fifteen days from the date of the judgment.

Application  
of  
R.S.O. 1960,  
c. 252

**(2)** For the purpose of giving or refusing leave to appeal or hearing and disposing of an appeal after leave given, the referee has the same powers as those conferred upon him by *The Municipal Drainage Act*, and the rules of practice under that Act apply so far as applicable to appeals to the referee under this Act, and, upon leave to appeal being given, proceedings upon the award or upon the judgment of the judge are stayed unless otherwise ordered by the referee. R.S.O. 1950, c. 105, s. 40.

FORM 1

(Section 4 (1) )

BY-LAW FOR APPOINTMENT OF ENGINEER

A by-law for the appointment of an engineer under *The Ditches and Watercourses Act*

Finally passed....., 19....  
The council of the.....of.....in the  
county (or district) of..... enacts as follows:

1. Pursuant to *The Ditches and Watercourses Act*,.....  
(name of person) of the.....of.....  
in the.....of....., is appointed  
engineer for this municipality to carry out the provisions of the Act.
2. The engineer shall be paid the following fees for services rendered  
under the Act (or as the case may be):

Clerk

Reeve

[L.S.]

## FORM 2

(Section 7 (1))

## NOTICE TO OWNERS OF LAND AFFECTED BY PROPOSED DITCH

To.....  
Sir,

I am the owner of lot (*describing it*) and as such owner I require a ditch to be constructed under *The Ditches and Watercourses Act* to drain it (*or, if for reconsideration of agreement or award or to deepen, widen, cover or otherwise improve the ditch, state the object*). The following other land will be affected: (*here set out the other parcels of land, lot, concession or street and township or other local municipality, and the name of the owner in each case; also each road and the municipal corporation controlling it*).

I hereby request you, as owner of (*state his land*), to attend at (*state place of meeting*), on.....the.....day of....., 19....., at the hour of.....o'clock in the.....noon, with the object of agreeing on the respective portions of the work and materials to be done and furnished by the several owners interested and the several portions of the ditch to be maintained by them.

Dated this.....day of....., 19.....

Yours, etc., .....  
(*Name of Owner*)

R.S.O. 1950, c. 105, Form 2.

## FORM 3

(Section 8)

## AGREEMENT BY OWNERS

Whereas it is found necessary that a ditch should be constructed (*or deepened, or widened, or otherwise improved*) under *The Ditches and Watercourses Act*, for the draining of the following land (and roads, *if any*): (*here describe each parcel and give name of owner as in the notice, including the applicant's own land, stating lot, concession or street, and township or other local municipality, and also roads and by whom controlled*).

Therefore we the owners within the meaning of the Act of the said lands (*and if roads and*.....the reeve of the municipality on behalf of the council thereof) do agree each with the other as follows: That a ditch be constructed (*or as the case may be*) and we do hereby estimate the cost thereof at \$....., and the ditch shall be of the following description: (*here give point of commencement, course and termination, its depth, bottom and top width and other particulars as agreed upon, also any bridges, culverts or catch-basins, etc., required*). I,....., owner of (*describe his land*) agree to (*here give portion of work to be done, or material to be supplied*), and to complete the performance thereof on or before the.....day of....., 19.....; I,..... owner of, etc. (*as above to the end of the ditch*).

That the ditch when constructed shall be maintained as follows: I,....., owner of (*describe his lands*) agree to maintain the portion of the ditch from (*fix the point of commencement*) to (*fix the point of termination of his portion*); I,....., owner of (*describe his land*) agree to maintain, etc., (*as above to the end of the ditch*).

Dated this.....day of....., 19.....

Witness,

.....  
(*Signatures of parties*)

R.S.O. 1950, c. 105, Form 3.

FORM 4

(Section 12)

REQUISITION FOR EXAMINATION BY ENGINEER

To.....

Clerk of the.....of.....

Sir,—I am, within the meaning of *The Ditches and Watercourses Act*, the owner of lot (*describing it*) and I require the construction (*or deepening, widening, covering or otherwise improving, as the case may be*), of a ditch under such Act, and the following land and roads will be affected: (*here describe each parcel to be affected, as in the notice for the meeting to agree, and state the name of the owner thereof*), and such owners having met and failed to agree in regard to the same, I request that the engineer appointed by the municipality be requested to appoint a time and place at which he will attend and examine the premises, hear any evidence of the parties and their witnesses, and make his award.

Dated this.....day of....., 19.....

.....  
(Signature of the party or parties)

R.S.O. 1950, c. 105, Form 4.

FORM 5

(Section 13 (3))

NOTICE OF APPOINTMENT FOR EXAMINATION BY ENGINEER

To (*name of owner*)  
(*P.O. address*)

Sir,—You are hereby notified that the engineer appointed by the municipality for the purpose of *The Ditches and Watercourses Act* has, in answer to my requisition, fixed the hour of.....o'clock in the .....noon of....., the.....day of....., 19....., to attend at (*name the place appointed*), and to examine the premises and site of the ditch required by me to be constructed (*or as the case may be*), under such Act, and you, as the owner of land affected, are required to attend with any witnesses that you desire to have heard, at such time and place.

Dated this.....day of....., 19.....

Yours, etc.,

.....  
(Signature of applicant)

R.S.O. 1950, c. 105, Form 5.

## FORM 6

(Section 15 (3) )

## AWARD OF ENGINEER

I, ....., the engineer appointed by the council of the municipality of the.....of..... in the county (or district) of....., under *The Ditches and Watercourses Act*, having been required so to do by the requisition of....., owner of lot....., (*describe as in requisition*), filed with the clerk of the municipality and representing that he requires certain work to be done under such Act for the draining of such land, and that the following other land (*and roads*) will be affected: (*here set out the other parcels of land or roads affected as in the requisition*), did attend at the time and place named in my notice in answer to the requisition, and having examined the locality (and the parties and their witnesses, *if such be the case*) find that the ditch (*or the deepening, widening, covering or otherwise improving of a ditch*) is required. The location, description and course of the ditch and its point of commencement and termination are as follows:

(*Here describe the ditch as to all above particulars.*)

The works will affect the following land: (*here set forth the other land and the respective owners*). I do, therefore, award and apportion the work and the furnishing of material among the land affected and the owners thereof according to my estimate of their respective interests in the works as follows:

1. (*Name of owner and description of his land*) shall make and complete (*here fix the point of commencement and ending of his portion*) and shall furnish the material (*state what material*), all of which, according to my estimate, will amount in value to \$. . . . ., and I fix the time for the completion of such work and providing such material on the..... day of....., 19....., at furthest.

2. (*Name of owner and description of his land and so on as above to the end.*)

I do further award and apportion the maintenance of the ditch as follows:

1. (*Name of owner and description of his land*) shall maintain (*here fix the points of commencement and ending of his portion*).

2. (*Name of owner, etc., as above.*)  
(*When rock drilling or blasting is directed, add particulars required by section 16.*)

The fees and the other charges attendant upon and for making this award are (*here give fees and other charges, including clerk's fees in detail*), amounting in all to \$. . . . ., which shall be borne and paid as follows: (*state by whom and by what land respectively*).

Dated this.....day of....., 19.....

Witness,

.....  
(*Signature of Engineer*)

FORM 7

(Section 27)

CERTIFICATE OF ENGINEER

To.....  
Clerk of the.....of.....

I hereby certify that the rock cutting and blasting provided for by my award made under *The Ditches and Watercourses Act*, and dated the.....day of....., 19....., was let to..... for \$....., and he has completed the work and is entitled to be paid that sum, and that my fees and charges (*stating items*) are \$.....

Dated this.....day of....., 19.....

.....  
(Signature of Engineer)

R.S.O. 1950, c. 105, Form 7.

FORM 8

(Section 29 (1) )

CERTIFICATE OF ENGINEER

To.....  
Clerk of the.....of.....

I hereby certify that.....has furnished the material and completed the work (*as the case may be*) which under my award made under *The Ditches and Watercourses Act*, and dated the.....day of....., 19..... owner of lot number (*describe his land giving township or otherwise*), was adjudged to perform, and having failed in the performance of the same it was subsequently let by me to..... for \$....., and as he has now completed the performance thereof he is entitled to be paid such amount.

I further certify that my fees and charges for my services rendered necessary by reason of such failure to perform are (*stating items*) \$....., and the amount payable to the contractor and the fees and charges are chargeable on (*describe property to be charged therewith*) under such Act, unless forthwith paid.

Dated this.....day of....., 19.....

Witness,

.....  
(Signature of Engineer)

R.S.O. 1950, c. 105, Form 8.