CHAPTER 126

Drainage Act

1. In this Act,

1. "benefit" means the advantages to any lands, roads, buildings or other structures from the construction, improvement, repair or maintenance of a drainage works such as will result in a higher market value or increased crop production or improved appearance or better control of surface or subsurface water, or any other advantages relating to the betterment of lands, roads, buildings or other structures;

2. "benefit cost statement" means a statement relating the anticipated benefits expressed in dollars to the total estimated cost of the drainage works;

3. "built-up area" means an area of land where,

   i. not less than 50 per cent of the frontage upon one side of a road for a distance of not less than 200 metres is occupied by dwellings, buildings used for business purposes, schools or churches, or

   ii. not less than 50 per cent of the frontage upon both sides of a road for a distance of not less than 100 metres is occupied by dwellings, buildings used for business purposes, schools or churches, or

   iii. not more than 200 metres of a road separates any land described in subparagraph i or ii from any other land described in subparagraph i or ii, or

   iv. a plan of subdivision has been registered;

4. "commissioner" means a commissioner appointed by a municipality by by-law;

5. "conservation authority" means a conservation authority established under the Conservation Authorities Act;
6. "county" includes a provisional judicial district;

7. "county court" includes a district court;

8. "court of revision" means a court of revision constituted under this Act;

9. "Director" means the Director appointed for the purposes of this Act;

10. "drainage superintendent" means a drainage superintendent appointed by a municipality by by-law;

11. "drainage works" includes a drain constructed by any means, including the improving of a natural watercourse, and includes works necessary to regulate the water table or water level within or on any lands or to regulate the level of the waters of a drain, reservoir, lake or pond, and includes a dam, embankment, wall, protective works or any combination thereof;

12. "engineer" means an engineer registered under the Professional Engineers Act or a surveyor registered under the Surveyors Act, or a partnership, association of persons or corporation that holds a certificate of authorization under the Professional Engineers Act or the Surveyors Act, as the case may be;

13. "improvement" means any modification of or addition to a drainage works intended to increase the effectiveness of the system;

14. "initiating municipality" means the local municipality undertaking the construction, improvement, repair or maintenance of a drainage works to which this Act applies;

15. "injuring liability" means the part of the cost of the construction, improvement, maintenance or repair of a drainage works required to relieve the owners of any land or road from liability for injury caused by water artificially made to flow from such land or road upon any other land or road;

16. "lateral drain" means a drain that is designed for the drainage of one property and that begins and ends on the same property;
17. "maintenance" means the preservation of a drainage works;

18. "Minister" means the Minister of Agriculture and Food;

19. "outlet liability" means the part of the cost of the construction, improvement or maintenance of a drainage works that is required to provide such outlet or improved outlet;

20. "owner" includes a committee of the estate of a mentally incompetent person or of a person incapable of managing his affairs, and a guardian, executor, administrator or trustee in whom land is vested;

21. "preliminary report" means an engineer’s report containing the information specified in section 10;

22. "property" means a parcel of land that by the Assessment Act is required to be separately assessed;

23. "public utility" means a person having jurisdiction over any water works, gas works, electric heat, light and power works, telegraph and telephone lines, railways however operated, street railways and works for the transmission of gas, oil, water or electrical power or energy, or any similar works supplying the general public with necessaries or conveniences;

24. "referee" means the referee appointed under this Act;

25. "repair" means the restoration of a drainage works to its original condition;

26. "report" means an engineer’s report containing the information specified in section 8;

27. "road authority" means a body having jurisdiction and control of a common or public highway or road, or any part thereof, including a street, bridge and any other structure incidental thereto and any part thereof;

28. "special benefit" means any additional work or feature included in the construction, repair or improvement of a drainage works that has no effect on the functioning of the drainage works;
29. "sufficient outlet" means a point at which water can be discharged safely so that it will do no damage to lands or roads.

30. "Tribunal" means The Ontario Drainage Tribunal under this Act. 1975, c. 79, s. 1; 1978, c. 87, s. 6 (1).

MUTUAL AGREEMENT DRAINS

2. (1) When two or more owners of land desire to construct or improve a drainage works on any of their lands and are willing to pay the cost thereof, they may enter into a written agreement for the construction, improvement, financing and maintenance of such drainage works, which shall include the following:


2. Descriptions of the lands of the parties to the agreement sufficient for the purposes of registration in the proper land registry office.

3. The estimated cost of the drainage works.

4. A description of the drainage works; including its nature and approximate location.

5. The proportion of the cost of the construction, improvement and maintenance of the drainage works that is to be borne by each of the owners of the lands.

6. The date the agreement was entered into.

7. An affidavit of a subscribing witness to the execution of the agreement by the parties sufficient for the purposes of registration in the proper land registry office.

(2) A copy of the agreement and the plans and schedules, if any, of the proposed drainage works may be filed with the clerk of the local municipality in which the land or any part thereof is situate, and the agreement or an executed copy thereof may be registered in the proper land registry office.

(3) An agreement made under this section shall, upon registration in the proper land registry office of the agreement or an executed copy thereof, be binding upon the heirs, executors, administrators, successors and assigns of each party to the agreement.
(4) The subsequent provisions of this Act do not apply to any drainage works constructed under this section. 1975, c. 79, s. 2.

**REQUISITION DRAINS**

3.—(1) Where it is necessary, for the proper drainage of any lands, that a drainage works should be constructed thereon or constructed thereon and through the land of one or more adjacent owners, the owner of the land requiring or to be benefitted by such drainage may file with the clerk of the local municipality in which the land is situate a requisition in the Form prescribed by the regulations requesting that an engineer be appointed.

(2) Upon filing the requisition, the owner shall deposit with the clerk of the municipality the sum of $300 to be used toward defraying the expenses incurred consequent thereon, which sum shall be taken into consideration by the engineer in apportioning costs.

(3) No drainage works, the total estimated cost of which will exceed $7,500, shall be constructed under this section.

(4) For the purposes of calculating the total estimated cost in subsection (3), the cost of crossing lands occupied by the works of a public utility or road authority shall not be included. 1975, c. 79, s. 3 (1-4).

(5) Only lands lying within 750 metres from the sides of the drainage works and land lying within 750 metres from the upstream point of commencement of the drainage works may be assessed under this section. 1975, c. 79, s. 3 (5); 1978, c. 87, s. 6 (2).

(6) The council of the local municipality, upon the filing of the requisition, shall, by by-law or resolution, appoint an engineer to make an examination of the area and to make a preliminary report.

(7) The engineer shall, before making his examination and report, cause the clerk of the local municipality to send to each owner of land and to each public utility that may be affected by such drainage works as set out in the requisition at least seven days written notice in the Form prescribed by the regulations by prepaid mail, addressed to each such owner at his address as shown by the last revised assessment roll, of the date, time and place of an on-site meeting with the engineer to examine the area.
(8) The engineer shall file with his preliminary report a benefit cost statement and a statement of the anticipated effects of the drainage works on the local environment.

(9) The engineer in his preliminary report shall set out the requirements for a petition sufficient to comply with section 4.

(10) Upon the filing of the engineer's preliminary report, the council of the local municipality shall cause the clerk to send by prepaid mail to each owner of lands to be affected by the drainage works as set out in the requisition and to the Minister, a notice stating the name or other designation of the drainage works and the date of the council meeting at which the preliminary report will be considered.

(11) A copy of the preliminary report, the benefit cost statement and the statement of the anticipated effect on the local environment must accompany each notice sent under subsection (10).

(12) Unless the owner who filed the requisition files with the clerk of the local municipality a petition sufficient to comply with section 4 within sixty days of the meeting at which the report was considered, the clerk shall send, by prepaid mail, to such owner, notice that unless the requisition is withdrawn or a petition is filed within thirty days from the date the notice was sent, the council of the local municipality shall instruct the engineer to prepare a report.

(13) Where a petition sufficient to comply with section 4 is filed within the time limits prescribed by subsection (12), the council of the local municipality shall proceed in the manner prescribed for a petition under section 4.

(14) Unless the requisition is withdrawn or a petition is filed with the council of the local municipality within the time limits prescribed by subsection (12), the council by by-law or resolution shall instruct the engineer to prepare a report.

(15) Notwithstanding any other provision of this Act, upon the filing of the report, unless the requisition is withdrawn, the council of the local municipality shall, subject to any appeal that may be taken, adopt the report and proceed to implement it in accordance with this Act.

(16) Upon the filing of a report, an appeal lies therefrom to the same tribunals and as nearly as may be possible in
the same manner and on the same grounds as in the case of a report for the construction of a drainage works commenced by petition under section 4.

(17) Where the requisition is withdrawn or the drainage works is not proceeded with under requisition as a result of an appeal, the owner who filed the requisition is chargeable with and liable to the municipality for the expenses incurred by the municipality in connection with the requisition, and the sum with which such owner is chargeable shall be entered upon the collector's roll for the municipality against the lands of the owner, and shall be collected in the same manner as real property taxes.

(18) Every ditch constructed under The Ditches and Watercourses Act, being chapter 109 of the Revised Statutes of Ontario, 1960, shall be maintained in accordance with the award of the engineer providing for such maintenance until such ditch is brought under the provisions of this Act by requisition in the manner prescribed by subsection (1) or by petition as set out in section 4. 1975, c. 79, s. 3 (6-18).

PETITION DRAINS

4.—(1) A petition for the drainage by means of a drainage works of an area requiring drainage as described in the petition may be filed with the clerk of the local municipality in which the area is situate by,

(a) the majority in number of the owners, as shown by the last revised assessment roll of lands in the area, including the owners of any roads in the area;

(b) the owner or owners, as shown by the last revised assessment roll, of lands in the area representing at least 60 per cent of the hectarage in the area;

(c) where a drainage works is required for a road or part thereof, the engineer, road superintendent or person having jurisdiction over such road or part, notwithstanding subsection 61 (5); or

(d) where a drainage works is required for the drainage of lands used for agricultural purposes, the Director. 1975, c. 79, s. 4 (1); 1980, c. 1, s. 1.

(2) A petition under subsection (1) shall be in the form prescribed by the regulations and, where it is filed by an owner or owners under clause (1)(a) or (b), shall be signed by such owner or owners.
(3) Where it is desired to construct a drainage works for the drainage of an area composed of lands or roads lying on each side of a boundary line between two or more local municipalities, the council of any of them may proceed upon a petition as required by this Act in all respects, including the sending of notices, as if such area were entirely within the limits of the municipality.

(4) Where a person who is the owner of land, but does not appear by the last revised assessment roll of the municipality to be the owner, is a petitioner, he shall be deemed an owner if his ownership is proved to the satisfaction of the clerk, and, if the person who appears by the assessment roll to be the owner is a petitioner, his name shall be disregarded in determining the sufficiency of the petition. 1975, c. 79, s. 4 (2-4).

(5) Where two or more persons are jointly assessed for a property, in determining the sufficiency of a petition, they shall be deemed to be one owner. 1975, c. 79, s. 4 (5); 1976, c. 8, s. 1.

5.—(1) Where a petition in accordance with section 4 has been filed, the council shall forthwith consider the petition and shall, within thirty days after the filing of the petition,

(a) if it decides not to proceed with the drainage works, give written notice of its decision to each petitioner; or

(b) if it decides to proceed with the drainage works, give written notice of the petition and of its decision to each petitioner, the clerk of each local municipality that may be affected, and the conservation authority that has jurisdiction over any lands in the area or, if no such conservation authority exists, the Minister of Natural Resources.

(2) Where a petitioner,

(a) receives notice under clause (1) (a) of a decision of the council not to proceed with the drainage works; or

(b) has not, within thirty days after the filing of the petition, received notice of a decision of the council,

the petitioner may appeal to the Tribunal or, where lands used for agricultural purposes are included in the area described in the petition, the Minister may refer the matter
to the Tribunal, and the Tribunal may confirm the decision of the council or direct the council to make such decision and to take such action as the council is authorized to take under this Act and as the Tribunal considers proper. 1975, c. 79, s. 5.

6.—(1) Upon receipt of a notice from the initiating municipality under subsection 5 (1), a local municipality, conservation authority or the Minister of Natural Resources, as the case may be, may send to the council of the initiating municipality within thirty days a notice that an environmental appraisal of the effects of the drainage works on the area is required, and the cost thereof shall be paid by the party who requested it.

(2) The council of the initiating municipality may obtain an environmental appraisal on its own initiative, the cost of which shall be paid by the municipality from its general funds.

(3) The party requesting the environmental appraisal or the council of the initiating municipality, as the case may be, within forty days of receiving the account therefor, may appeal to the Tribunal, and the Tribunal may confirm or vary the account as it considers proper. 1975, c. 79, s. 6.

7.—(1) The council of any local municipality to which notice was given under subsection 5 (1) or the Minister may send to the council of the initiating municipality within thirty days a notice that a benefit cost statement is required and the cost of preparing such statement shall be paid by the party who required it.

(2) The council of the initiating municipality may obtain a benefit cost statement on its own initiative, the cost of which shall be paid by the municipality from its general funds. 1975, c. 79, s. 7.

8.—(1) Where the council of the initiating municipality has decided to proceed with the drainage works described in a petition, the council shall, by by-law or resolution, appoint an engineer to make an examination of the area requiring drainage as described in the petition and to prepare a report which shall include,

(a) plans, profiles and specifications of the drainage works, including a description of the area requiring drainage;

(b) an estimate of the total cost thereof;

(c) an assessment of the amount or proportion of the cost of the works to be assessed against every parcel
of land and road for benefit, outlet liability and injuring liability;

(d) allowances, if any, to be paid to the owners of land affected by the drainage works; and

(e) such other matters as are provided for under this Act. 1975, c. 79, s. 8 (1); 1980, c. 1, s. 2.

Where the engineer is a corporation, etc.

Where the engineer appointed under this Act is a corporation, association or partnership, the appointee shall, within ten days of the date of appointment, notify the council of the name of the individual engineer who will have charge of the project and who will remain in charge until the report is filed and if for any reason the designated engineer ceases to be employed by the appointee, the appointee shall within ten days of such time notify the council of the name of his replacement.

Appeal or referral to Tribunal

(3) Where the council fails to appoint an engineer within sixty days after giving notice of its decision to proceed, any petitioner may appeal to the Tribunal or, where the petition was signed by the Director or where lands used for agricultural purposes are included in the area to be drained, the Minister may refer the matter to the Tribunal, and the Tribunal may direct the council to take such action as the council is authorized to take under this Act and as the Tribunal considers proper.

One report on two or more petitions

(4) The council of the initiating municipality may instruct the engineer to make one report with respect to two or more petitions requiring drainage in two or more adjoining areas that require drainage. 1975, c. 79, s. 8 (2-4).

Notice

9.—(1) The engineer shall, before making his examination and report, cause the clerk of the local municipality to send at least seven days written notice in the Form prescribed by the regulations to each owner of lands within the area requiring drainage as described in the petition and to each public utility that may be affected by the petition setting out the time and place of an on-site meeting with the engineer to examine the area.

Duty of engineer

(2) At the on-site meeting, the engineer shall,

(a) determine the area requiring drainage;

(b) determine whether the petition complies with section 4 for the area requiring drainage; and
(c) where he is of opinion that the petition fails to so comply, establish the requirements for a petition to comply with section 4.

(3) Where the engineer is of opinion that the petition complies with section 4, he shall proceed to prepare his report or a preliminary report, as the case may be.

(4) Where the engineer is of opinion that the petition does not comply with section 4, he shall so report to the council of the initiating municipality stating wherein the petition is deficient, the amount of his fees and by whom they shall be paid, and the council shall forthwith send a copy of such opinion to each petitioner.

(5) Where, within sixty days of the engineer's reporting to council under subsection (4), a petition that complies with the requirements of section 4 is filed with the clerk of the council,

(a) the council shall instruct the engineer to prepare his report, or a preliminary report, as the case may be; and

(b) the fees mentioned in subsection (4) shall form part of the cost of the drainage works.

10.-(1) Where the council of the initiating municipality deems it expedient, it may, or if it has received notice under section 6 that an environmental appraisal is required, it shall instruct the engineer to prepare a preliminary report containing a sketched plan of the drainage works and an estimate of the cost thereof in so far as it is practicable to do so, and which shall include the environmental appraisal, if any, and the benefit cost statement, if any, and the engineer shall forthwith prepare and file such a preliminary report with the council.

(2) Upon the filing of the preliminary report, the council of the initiating municipality shall cause the clerk to send a copy of the preliminary report and a notice of the date of the council meeting at which the preliminary report will be considered, to,

(a) every owner of land within the area requiring drainage as determined by the engineer or described in the petition, as the case may be;

(b) any public utility or road authority that may be affected by the drainage works;
(c) any local municipality and conservation authority entitled to notice under section 5 or, if no authority is entitled to notice, to the Minister of Natural Resources; and

(d) the Minister.

(3) At the meeting referred to in subsection (2), the council shall consider the preliminary report and shall give to any person who signed the petition an opportunity to withdraw from it by putting his withdrawal in writing, signing it and filing it with the clerk, and to any person present who owns land in the area requiring drainage and has not signed the petition an opportunity to do so.

(4) If at the end of the meeting the petition does not contain a sufficient number of names to comply with section 4, the original petitioners are chargeable in equal shares with and liable to the municipality for the expenses incurred by the municipality in connection with the petition and preliminary report, excluding the amount of any grants and the costs of any environmental appraisal or benefit cost statement, and the sum with which each of such petitioners is chargeable shall be entered upon the collector's roll for the municipality against the lands of the person liable and shall be collected in the same manner as real property taxes.

(5) If at the end of the meeting, the petition contains a sufficient number of names to comply with section 4, the council may instruct the engineer to proceed with the preparation of his report.

(6) Where the council of the initiating municipality fails to instruct the engineer to proceed with the preparation of his report, any petitioner may appeal to the Tribunal or, where lands used for agricultural purposes are included in the area to be drained, the Minister may refer the matter to the Tribunal and the Tribunal may direct the council to take such action as the council is authorized to take under this Act and as the Tribunal considers proper.

(7) Where any party mentioned in clause (2) (a), (b) or (c) is dissatisfied with the environmental appraisal, an appeal lies to the Tribunal.

(8) Where,

(a) lands used for agricultural purposes are included in the area to be drained, the Minister; or

(b) a conservation authority or regional office of the Ministry of Natural Resources reports to the Minister
of Natural Resources that the environmental appraisal is unsatisfactory, the Minister of Natural Resources,

may refer the environmental appraisal to the Tribunal.

(9) An appeal under subsection (7) or a reference under subsection (8) shall be made within forty days after the meeting referred to in subsection (2), and the Tribunal may confirm the environmental appraisal or direct that it be reconsidered in such respects as the Tribunal considers proper. 1975, c. 79, s. 10.

ENGINEER'S REPORT

11. The engineer shall, to the best of his skill, knowledge, judgment and ability, honestly and faithfully, and without fear of, favour to or prejudice against any person, perform the duty assigned to him in connection with any drainage works and make a true report thereon. 1975, c. 79, s. 11.

12.—(1) The engineer or any of his assistants when engaged in the performance of their duties during or after the examination of the locality may enter, measure along, ascertain the bearings of any line, plant the stakes that they consider necessary for the performance of the work and take levels on the land of any person.

(2) Every person who wilfully interferes with or obstructs the engineer or any of his assistants in the exercise of the powers conferred by this section is guilty of an offence and on conviction is liable to a fine of not more than $1,000. 1975, c. 79, s. 12.

13.—(1) The engineer in making his survey shall establish sufficient bench marks or permanent levels by which a drainage works may be governed, and shall in his report record the description, location and elevation of every bench mark or permanent level.

(2) Every person who interferes with, removes or destroys any bench mark or permanent level established under this section is guilty of an offence and on conviction is liable to a fine of not more than $1,000. 1975, c. 79, s. 13.

14.—(1) Subject to subsection (2), the construction of a drainage works by means of the improvement of a natural watercourse shall not include a covered drainage works,
unless the part of the drainage works in which the covered drainage works is included provides capacity for all the surface water from the lands and roads draining naturally towards and into it and for all the waters from all the lands and roads assessed for the drainage works.

(2) A covered drainage works may be employed in conjunction with an open drain provided that the total capacity of the system is sufficient for the purposes of subsection (1). 1975, c. 79, s. 14.

15. Subject to section 32, every drainage works constructed under this Act shall be continued to a sufficient outlet. 1975, c. 79, s. 15.

16. The engineer in his report shall determine in what manner the material taken from any drainage works in the construction, improvement, repair, or maintenance thereof shall be disposed of. 1975, c. 79, s. 16.

17. The engineer in his report shall provide for the construction, enlargement or other improvement of any bridges or culverts throughout the course of the drainage works rendered necessary by the drainage works crossing any public road or part thereof. 1975, c. 79, s. 17.

18. Subject to section 33, the engineer in his report shall provide for the construction or the replacement, enlargement or other improvement of bridges, culverts, pumping stations and water gates rendered necessary by the drainage works and he shall include the cost of the construction or the replacement, enlargement or other improvement of such bridges, pumping stations, water gates and culverts, in his assessment for the construction, improvement, maintenance or repair of the drainage works, and they shall, for the purposes of maintenance or repair be deemed part of the drainage works. 1975, c. 79, s. 18.

19. The engineer in his report may recommend the abandonment of any drain or part thereof that is no longer useful or that is being supplanted by a new drainage works. 1975, c. 79, s. 19.

20.—(1) Where it is considered necessary to continue a drainage works beyond the limits of the initiating municipality, the engineer employed by the council of such municipality may continue the drainage works on or along or across any road allowance or other boundary between any two or more municipalities, and from any such road allowance
or other boundary into or through any municipality until he reaches a sufficient outlet.

(2) A drainage works shall not be deemed to be continued into a municipality other than the initiating municipality merely by reason of such drainage works or some part thereof being constructed on a road allowance forming the boundary line between two or more municipalities. 1975, c. 79, s. 20.

ASSESSMENTS

21. The engineer in his report shall assess for benefit, outlet liability and injuring liability, and shall insert in an assessment schedule, in separate columns, the sums assessed for each opposite each parcel of land and road liable therefor. 1975, c. 79, s. 21.

22. Lands, roads, buildings, utilities or other structures that are increased in value or are more easily maintained as a result of the construction, improvement, maintenance or repair of a drainage works may be assessed for benefit. 1975, c. 79, s. 22.

23.—(1) Lands and roads that use a drainage works as an outlet, or for which, when the drainage works is constructed or improved, an improved outlet is provided either directly or indirectly through the medium of any other drainage works or of a swale, ravine, creek or watercourse, may be assessed for outlet liability.

(2) If, from any land or road, water is artificially caused by any means to flow upon and injure any other land or road, the land or road from which the water is caused to flow may be assessed for injuring liability with respect to a drainage works to relieve the injury so caused to such other land or road.

(3) The assessment for outlet liability and injuring liability provided for in subsections (1) and (2) shall be based upon the volume and rate of flow of the water artificially caused to flow upon the injured land or road or into the drainage works from the lands and roads liable for such assessments.

(4) The owners of the lands and roads made liable to assessment only under subsection (1) or (2) shall neither count for nor against the petition required by section 4 unless within the area therein described. 1975, c. 79, s. 23.

24. The engineer may assess for special benefit any lands for which special benefits have been provided by the drainage works. 1975, c. 79, s. 24.
25.—(1) The council of the local municipality may direct the engineer to assess as a block, a built-up area designated by the council, and the sum assessed therefor may be levied against all the rateable properties in the designated area pro rata on the basis of the assessed value of the land and buildings.

(2) Where the engineer makes a block assessment under subsection (1), he shall designate the proportion of the assessment to be charged against the public roads in the designated area. 1975, c. 79, s. 25.

26. In addition to all other sums lawfully assessed against the property of a public utility or road authority under this Act, and notwithstanding that the public utility or road authority is not otherwise assessable under this Act, the public utility or road authority shall be assessed for and shall pay all the increase of cost of such drainage works caused by the existence of the works of the public utility or road authority. 1975, c. 79, s. 26.

27. Where a drainage works is continued into or through a municipality other than the initiating municipality under section 20, the engineer may assess, regardless of municipal boundaries, all lands and roads that, in his opinion, should be assessed for benefit, outlet liability or injuring liability, with such proportion of the cost of the drainage works as appears just, and in his report thereon he shall estimate separately the cost of the drainage works within each municipality and upon the road allowances or other boundaries. 1975, c. 79, s. 27.

28. Where any lands or roads in or under the jurisdiction of a local municipality, other than the local municipalities into or through which the drainage works passes, are, in the opinion of the engineer of the initiating or other municipality doing the work or part thereof, benefitted by the drainage works or provided with an improved outlet or relieved from injuring liability, he may assess the cost of the construction, improvement, maintenance or repair of the drainage works in the same manner as is provided in section 27. 1975, c. 79, s. 28.

ALLOWANCES AND COMPENSATION

29. The engineer in his report shall estimate and allow in money to the owner of any land that it is necessary to use,

(a) for the construction or improvement of a drainage works;
(b) for the disposal of material removed from drainage works;

(c) as a site for a pumping station to be used in connection with a drainage works; or

(d) as a means of access to any such pumping station, if, in the opinion of the engineer, such right of way is sufficient for the purposes of the drainage works, the value of any such land or the damages, if any, thereto, and shall include such sums in his estimates of the cost of the construction, improvement, repair or maintenance of the drainage works. 1975, c. 79, s. 29; 1980, c. 1, s. 3.

30. The engineer shall determine the amount to be paid to persons entitled thereto for damage, if any, to ornamental trees, lawns, fences, lands and crops occasioned by the disposal of material removed from a drainage works and shall include such sums in his estimates of the cost of the construction, improvement, repair or maintenance of the drainage works. 1975, c. 79, s. 30.

31. Where an existing drain that was not constructed on requisition or petition under this Act or any predecessor of this Act is incorporated in whole or in part in a drainage works, the engineer in his report shall estimate and allow in money to the owner of such drain or part the value to the drainage works of such drain or part and shall include such sum in his estimates of the cost of the construction, improvement, repair or maintenance of the drainage works. 1980, c. 1, s. 4.

32. Where, in the opinion of the engineer, the cost of continuing a drainage works to a sufficient outlet or the cost of constructing or improving a drainage works with sufficient capacity to carry off the water will exceed the amount of injury likely to be caused to low-lying lands along the course of or below the termination of the drainage works, instead of continuing the works to such an outlet, or making it of such capacity, he may include in his estimate of cost a sufficient sum to compensate the owners of such low-lying lands for any injuries they may sustain from the drainage works, and in his report he shall determine the amount to be paid to the owners of such low-lying lands in respect of such injuries. 1975, c. 79, s. 32.

33. Where the engineer thinks it expedient to make an allowance for loss of access to an owner instead of providing for the construction or the replacement, enlargement or other improvement of a bridge, he shall in his report provide for payment to the owner of such amount as appears just by way of allowance for loss of access and shall include such sums in his estimates of the cost of
the construction, improvement, repair or maintenance of the drainage works. 1980, c. 1, s. 5.

34. In fixing the sum to be assessed upon any land or road, the engineer may take into consideration any prior assessment or allowance on the same land or road for the construction, improvement, maintenance or repair of a drainage works and make such adjustment therefor as appears just, and in his report he shall state the adjustment so made. 1975, c. 79, s. 34.

35. The assessment upon any land or road for a drainage works shall be shown by the engineer placing in a schedule to his report sums of money opposite the land or road, and, where he considers it advisable, the fractional part of the whole cost to be borne by the land or road. 1975, c. 79, s. 35.

36. The engineer, in assessing the lands and roads requiring drainage or otherwise liable for assessment under this Act, shall show in his report the approximate number of hectares affected by the drainage works in each parcel of land assessed for the drainage works. 1975, c. 79, s. 36; 1978, c. 87, s. 6 (3).

37. The engineer in his report shall list separately the lands in each municipality that are assessed for a drainage works and shall indicate the assessment for the cost of lateral drains and the assessments of lands that are not agricultural lands. 1975, c. 79, s. 37.

38. Where the engineer considers it equitable that the cost of the maintenance and repair of a drainage works be assessed upon a basis different from that upon which the cost of its construction or improvement is assessed, he shall determine and report the basis upon which the cost of maintenance and repair of the drainage works or of any part or parts thereof shall be assessed. 1975, c. 79, s. 38.

39.—(1) The engineer shall file his report with the clerk of the initiating municipality as soon as it is completed or in any event within six months after his appointment, or within such further time as may be extended before or after the expiry of such six-month period by the council of the municipality by resolution.

(2) Where, after thirty days notice by council, the engineer neglects to make his report within the time limited by or extended under this section, he shall forfeit all claims for compensation for the work done by him upon the drainage works, and the council of the local municipality may appoint another engineer.
(3) A by-law passed by the council of any local municipality for the construction of a drainage works under this Act shall not be quashed by reason only that the report of the engineer was not filed within the time limited by or extended under this section. 1975, c. 79, s. 39.

40. Where the engineer finds that a drainage works is not required or is impractical, or cannot be constructed under this Act, he shall forthwith file with the clerk of the initiating municipality a report to that effect, stating his reasons therefor, the amount of his fees and other charges and by whom they shall be paid, and the clerk shall forthwith send a notice of the filing of such report, by prepaid mail, to all persons who signed the petition or requisition, as the case may be, and the matter shall not be further proceeded with unless the decision of the engineer is reversed on appeal. 1975, c. 79, s. 40.

41. — (1) Upon the filing of the engineer’s report, the council of the initiating municipality, if it intends to proceed with the drainage works, shall, within thirty days of the filing of the report, cause the clerk of the initiating municipality to send a copy of the report and a notice by prepaid mail stating,

(a) the date of the filing of the report;

(b) the name or other designation of the drainage works; and

(c) the date of the council meeting at which the report will be considered,

to

(d) the owners, in the initiating municipality, as shown by the last revised assessment roll to be the owners of lands and roads assessed for the drainage works or for which compensation or other allowances have been provided in the report;

(e) the clerk of every other local municipality in which any land or road that is assessed for the drainage works or for which compensation or other allowances have been provided in the report is situate;

(f) the secretary-treasurer of each conservation authority that has jurisdiction over any land affected by the report;
(g) any railway company, public utility or road authority affected by the report, other than by way of assessment;

(h) the Minister of Natural Resources where land under his jurisdiction may be affected by the report; and

(i) the Director.

(2) The clerk of every other local municipality in which any land or road that is assessed for the drainage works or for which compensation or other allowances have been provided in the report is situate shall send within thirty days of the sending of the last notice under subsection (1) a copy of the report and notice by prepaid mail to the owners, as shown by the last revised assessment roll to be the owners of the lands and roads in such municipality assessed for the drainage works, or for which compensation or other allowance has been provided in the report stating,

(a) the date of the filing of the report;

(b) the name or other designation of the drainage works; and

(c) the date of the council meeting of the initiating municipality at which the report will be considered. 1975, c. 79, s. 41 (1, 2).

(3) Notwithstanding subsections (1) and (2), where a block assessment is made, the notice to the owners of the lands so assessed need not be accompanied by a copy of the report. 1980, c. 1, s. 6.

(4) The date of the council meeting at which the report will be considered shall not be less than ten days after the last notice has been mailed pursuant to subsections (1) and (2).

(5) A by-law passed by the council of any local municipality in connection with the construction of a drainage works under this Act shall not be quashed by reason only that any notices required under this section were not sent within the specified time limits. 1975, c. 79, s. 41 (3, 4).

42. The council of the initiating municipality at the meeting mentioned in section 41 shall consider the report, and, where the drainage works is requested on petition, shall give an opportunity to any person who has signed the petition to withdraw from it by putting his withdrawal in writing, signing it and filing it with the clerk, and shall also give those present owning lands within the area requiring drainage who have not signed the petition an opportunity
to do so, and should any of the lands or roads owned by the municipality within the area requiring drainage as described in the petition be assessed, the council may by resolution authorize the head of the municipality to sign the petition for the municipality, and such signature counts as that of one person in favour of the petition. 1975, c. 79, s. 42.

43. If, after striking out the names of the persons withdrawing, the names remaining on the petition, including the names, if any, added as provided by section 42 do not comply with section 4, the original petitioners on their respective assessments in the report are chargeable pro rata with and liable to the municipality for the expenses incurred by the municipality in connection with the petition and report and the sum with which each of such petitioners is chargeable shall be entered upon the collector’s roll for the municipality against the lands of the person liable, and shall be collected in the same manner as real property taxes. 1975, c. 79, s. 43.

44. If, at the end of such council meeting, the petition contains a sufficient number of names to comply with section 4, the council may proceed to adopt the report, and, subject to section 59, no person having signed the petition shall, after the adoption of the report, be permitted to withdraw. 1975, c. 79, s. 44.

45.—(1) A report may be adopted by by-law in the Form prescribed by the regulations and, when such by-law is given two readings by council, the report shall be deemed to be adopted and the by-law shall be known as a provisional by-law.

(2) Where a report is not adopted by council, any petitioner may appeal to the Tribunal or, where lands used for agricultural purposes are included in the area to be drained, the Minister may refer the matter to the Tribunal. 1975, c. 79, s. 45.

46.—(1) The council of the initiating municipality shall, within five days after the adoption of the report, send a copy of the provisional by-law, exclusive of the engineer’s report, and a notice of the time and place of the first sitting of the court of revision by prepaid mail to every other local municipality in which any land or road is assessed for the drainage works or for which allowance or compensation has been provided for in the report. 1975, c. 79, s. 46 (1).

(2) The council of the initiating municipality and of every local municipality to whom a copy of the provisional by-law is sent.
under subsection (1) shall, within thirty days after the adoption of
the report, send a copy of the provisional by-law, exclusive of the
engineer's report, and a notice of the time and place of the sitting of
the court of revision by prepaid mail to each person or body
entitled to notice under section 41 and the notice shall inform each
owner that he may appeal his assessment to the court of revision
by a notice given to the clerk of the initiating municipality not later
than ten days prior to the first sitting of the court of revision.
1980, c. 1, s. 7.

(3) The first sitting of the court of revision shall be held
on a day not earlier than twenty nor later than thirty days
from the date of completing the mailing of the copies of the
provisional by-law under subsection (2). 1975, c. 79, s. 46 (3).

APPEALS

47.—(1) Any owner of land or public utility affected by
a drainage works, if dissatisfied with the report of the engineer
on the grounds that it does not comply with the require-
ments of this Act, or that the engineer has reported that
the drainage works cannot be constructed under section 4,
may appeal to the referee and in every case a written notice
of appeal shall be served upon the council of the initiating
municipality within forty days after the mailing of the notices
under section 40 or subsection 46 (2), as the case may be. 1975, c.
79, s. 47 (1); 1980, c. 1, s. 8.

(2) Upon receipt of a notice of appeal under subsection (1),
the clerk of the municipality shall forthwith record the notice
and send a copy of the notice to the clerk of the court of
the referee. 1975, c. 79, s. 47 (2).

48.—(1) Any owner of land or any public utility affected
by a drainage works, if dissatisfied with the report of the
engineer on the grounds that,

(a) the benefits to be derived from the drainage works
are not commensurate with the estimated cost
thereof;

(b) the drainage works should be modified on grounds
to be stated;

(c) the compensation or allowances provided by the
engineer are inadequate or excessive;

(d) the engineer has reported that the drainage works
is not required, or is impractical, or cannot be con-
structed under section 3,
may appeal to the Tribunal, and in every case a written notice of appeal shall be served within forty days after the mailing of the notice under section 40 or subsection 46 (2), as the case may be. 1975, c. 79, s. 48 (1); 1980, c. 1, s. 9.

(2) Where lands used for agricultural purposes may be affected by the drainage works, the Director may appeal to the Tribunal on any of the grounds and in the manner mentioned in subsection (1). 1975, c. 79, s. 48 (2).

49. Where the proposed drainage works is to be undertaken within a watershed in which a conservation authority has jurisdiction, the authority may appeal from the report of the engineer to the Tribunal on the ground that the drainage works will injuriously affect a scheme undertaken by the authority under the Conservation Authorities Act, and in every case a written notice of appeal shall be served within forty days after the mailing of the notices under subsection 46 (2). 1975, c. 79, s. 49; 1980, c. 1, s. 10.

50.—(1) The council of any local municipality to which a copy of a provisional by-law was sent under subsection 46 (1) may, within forty days after the copy of the provisional by-law was sent to the clerk, appeal to the Tribunal from the report by serving the clerk of the initiating municipality and the clerk of every other municipality assessed by the engineer with a written notice of appeal setting forth the reasons for such appeal. 1980, c. 1, s. 11.

(2) The reasons for appeal may be the following, or any of them,

(a) that the proposed drainage works as it affects the appealing municipality should be abandoned or modified, on grounds to be stated;

(b) that the course of the drainage works or any part thereof should be altered;

(c) that the drainage works does not provide a sufficient outlet;

(d) that the drainage works should be carried to an outlet in the initiating municipality or elsewhere;

(e) that a petition has been received by the council of the appealing municipality, as provided by section 4, for the enlargement by the appealing municipality of any part of a drainage works lying within its limits, and thence to an outlet, and that the council
is of opinion that such enlargement is desirable to afford drainage facilities for the area described in the petition;

(f) the work is unnecessary; or

(g) that the assessment against lands and roads within the limits of the appealing municipality and roads under its jurisdiction is illegal, unjust or excessive. 1975, c. 79, s. 50 (2).

51.—(1) On any appeal or reference to the Tribunal under this Act, the Tribunal shall hear and determine the matter and, where not so provided, may make such order and direct such things to be done as are authorized by this Act or as it considers proper to carry out the purposes of this Act. 1975, c. 79, s. 51 (1); 1980, c. 1, s. 12.

Parties

(2) The parties to an appeal or reference to the Tribunal under this Act shall be the person making the appeal or reference and such other persons as the Tribunal may specify. 1975, c. 79, s. 51 (2).

52.—(1) Any owner of land assessed for the drainage works who complains that his or any other land or road has been assessed too high or too low or that any land or road that should have been assessed has not been assessed, or that due consideration has not been given as to type of use of land, may personally, or by his agent, appeal to the court of revision by giving notice in writing to the clerk of the initiating municipality setting out the grounds of his appeal, and the appeal shall be heard by the court of revision.

(2) Every notice of appeal shall be given at least ten days before the first sitting of the court, but the court may, though notice of appeal has not been given, by resolution passed at its first sitting, allow an appeal to be heard on such conditions as to giving notice to all persons interested or otherwise as appear just. 1975, c. 79, s. 52.

53. When the ground of appeal is that lands or roads are assessed too high and the evidence adduced satisfies the court of revision or Tribunal that the assessments on such lands or roads should be reduced and there is no evidence to indicate that the amount of such reduction should be levied against lands or roads whose owners are parties to appeals then pending before the court of revision or Tribunal, the court or Tribunal shall adjourn the hearing of the appeal.
for a time sufficient to enable the clerk to notify by prepaid mail such persons as the appellant may specify who are shown by the last revised assessment roll to be owners of land affected of the date to which the hearing is adjourned, and the clerk shall so notify all such persons, and at such adjourned hearing the court or Tribunal shall dispose of the matter of appeal and, where appropriate, redistribute the assessments in such manner as appears just. 1975, c. 79, s. 53.

54.—(1) Any party to an appeal before the court of revision may appeal to the Tribunal by giving notice addressed to the clerk of the Tribunal, given to the clerk of the initiating municipality, from the decision of the court of revision or from its omission, neglect or refusal to hear or decide an appeal within twenty-one days of the pronouncement of the decision of the court of revision or of any matter evidencing such omission, neglect or refusal.

(2) The clerk of the Tribunal shall give ten days notice to an appellant of the time and place of the hearing of the appeal by the Tribunal.

(3) Every appeal shall be heard by the Tribunal by way of a trial de novo and shall be disposed of by the Tribunal in such manner as it considers proper, and its decision is final. 1975, c. 79, s. 54.

55. In any appeal to the court of revision or to the Tribunal in which the engineer is called upon to give evidence as to how an assessment was determined, he shall give his evidence before the appellant presents his case. 1975, c. 79, s. 55.

56. Any change in an assessment made by the court of revision or by the Tribunal shall be given effect to by the clerk of the local municipality altering the assessments and other parts of the schedule to comply therewith and sending notice thereof to the owners affected, and the provisional by-law shall, before the passing thereof, be amended to carry out any changes so made by the court of revision or by the Tribunal. 1975, c. 79, s. 56.

57. The council of the initiating municipality, at any time before passing the by-law, if it appears that there are or may be errors in the report of the engineer or that for any other reason the report should be reconsidered, may refer the report back to him for reconsideration, and the engineer shall thereupon reconsider his report and shall further report to the council, which report has the same effect and shall be
By-law may be passed

58. (1) Where the council of an initiating municipality has adopted a report for the construction of a drainage works, after the time for appealing has expired and there are no appeals or after all appeals have been decided, the council may pass a provisional by-law thereby authorizing the construction of the drainage works, and work may be commenced ten days after the by-law is passed if no notice of intention to make application to quash the by-law has been filed with the clerk of the council.

Quashing of by-law

(2) If no notice of intention to make application to quash a by-law is filed with the clerk of the council within ten days after the passing of the by-law or, where a notice of intention has been given, if an application to quash is not made to the referee within three months after the passing of the by-law, the by-law, or so much thereof as is not the subject of or is not quashed upon any such application, is valid and binding according to its terms, so far as it prescribes or directs anything within the proper competence of the council.

Repeal of by-law

(3) A by-law may be repealed at any time before the work is commenced and before any assessment has been levied against the land assessed, and in such case the council of the initiating municipality shall pay all expenses in connection therewith out of the general funds of the municipality.

Where error in report

(4) If, at any time after the by-law is passed and before any assessments are levied, a gross error in the report is found, the council of the initiating municipality may on notice to all persons assessed apply to the Tribunal to correct the error. 1975, c. 79, s. 58 (1-4).

Appeal to Tribunal

(5) Where the council does not proceed with reasonable dispatch with the construction of the work after passage of the by-law, a requisitioner or a petitioner may appeal to the Tribunal or, where lands used for agricultural purposes are included in the area to be drained, the Minister may refer the matter to the Tribunal, and the Tribunal may direct the council to take such action as the council is authorized to take under this Act and as the Tribunal considers proper. 1975, c. 79, s. 58 (5); 1980, c. 1, s. 13.

Meeting to consider contract price

59. (1) Where the contract price exceeds 133 per cent of the engineer's estimate of the contract price, the council of the initiating municipality shall call a meeting in the
manner prescribed by section 41, and sections 42 and 43 apply with necessary modifications.

(2) If at the close of the meeting the petition contains a sufficient number of names to comply with section 4, the council may proceed with the construction of the drainage works. 1975, c. 79, s. 59.

60. The council of each local municipality to which a copy of the report is required to be sent under subsection 41 (1) shall raise and pay over to the treasurer of the initiating municipality its proportion of the cost of the construction of the drainage works within sixty days after the drainage works has been certified complete by the engineer or drainage superintendent. 1975, c. 79, s. 60; 1980, c. 1, s. 14.

61.—(1) The council of each local municipality that is required to raise the whole or any part of the cost of the drainage works shall by by-law impose upon the land assessed for the drainage works the assessment with which it is chargeable, and the amount so imposed is payable in such instalments as the council may prescribe. 1980, c. 1, s. 15.

(2) The council of any local municipality may provide that persons whose lands are assessed may commute for a payment in cash the assessments imposed thereon and may prescribe the terms and conditions thereof.

(3) Where the assessment against any parcel of land is $50 or less, the council of the local municipality may provide that the assessment shall be paid out of the general funds of the municipality or that the assessment shall be paid in the first year in which the assessment is imposed upon the land assessed.

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

(5) Notwithstanding the provisions of any general or special Act, land exempt from taxation is for all purposes except petitioning for or against undertaking a drainage works, subject to the provisions of this Act and shall be assessed, and the assessments so imposed that fall due while
such land remains exempt from taxation shall be paid by the municipality that imposed the assessments, provided that such assessments imposed upon land on which a church or place of worship is erected and that is used in connection therewith, land of a university, college or seminary of learning, whether vested in a trustee or otherwise, and land of a board of an elementary or secondary school as defined in the Education Act and land owned by a county or a regional municipality, shall be paid by the owners of the land. 1975, c. 79, s. 61 (2-5).

**62.**—(1) Any by-law for the assessment upon the lands and roads liable to contribute for any drainage works that has been acted upon by the completion of the drainage works in whole or in part shall, where more than sufficient funds or where insufficient funds have been provided for the completion of or proper contribution towards the drainage works or for the redemption of the debentures authorized to be issued thereunder as they become payable, be amended, and, if lands and roads in any other municipality are assessed for the drainage works, the surplus or deficiency of money shall be divided *pro rata* among the contributing municipalities, and every such surplus or deficiency shall be applied by the council of the municipality *pro rata* according to the assessment in payment of the rates imposed by it for the drainage works.

(2) Where a by-law provides insufficient funds and lands and roads in another municipality are assessed for the drainage works, the council of the initiating municipality shall appoint an engineer to make an examination of the drainage works and report upon it with an estimate of the cost of completion for which sufficient funds have not been provided under the original by-law, and shall notify the heads of the other local municipalities as in the case of the original report, and the council of any municipality so notified has a right of appeal to the Tribunal in the manner provided by section 50 on the grounds of the improper expending or unlawful or other application of the drainage money already raised and is subject to the same duty, as to raising and paying over its share of the money to be raised, as in the case of the original by-law.

(3) Where any allowance or compensation has been determined for an owner under sections 29 to 33, the council may, where the amount so determined is less than the total amount owing from that owner, deduct from that total the amount so determined and the owner shall be responsible for paying the balance in the manner prescribed by the by-law.
Where any allowance or compensation mentioned in subsection (3) exceeds the total amount owing by the owner, the municipality shall pay the balance to him. 1975, c. 79, s. 62.

CONSTRUCTION

63.—(1) The contractor and his assistants when engaged in the construction, maintenance, improvement or repair of a drainage works may, with their equipment, enter upon whatever lands are necessary to complete the work within the working space designated in the engineer’s report.

(2) Every person who wilfully interferes with or obstructs the contractor or any of his assistants in the exercise of the powers conferred by subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than $1,000. 1975, c. 79, s. 63.

64. Any owner of land dissatisfied with the quality of the construction of a drainage works constructed under this Act may, at any time during construction or up to one year from the date of completion of the drainage works as certified by the engineer or drainage superintendent of the drainage works, appeal to the Tribunal on grounds to be stated. 1975, c. 79, s. 64.

SPECIAL PROVISIONS

65.—(1) Subject to subsection (6), where a parcel of land has been assessed by an engineer and, after the final revision of the assessment, the parcel is divided by the change in ownership of any part, the clerk of the local municipality in which the parcel is situate shall instruct an engineer in writing to apportion the assessment charged against the parcel among the parts into which it is divided.

(2) The clerk of the local municipality shall forthwith send a copy of the instructions by prepaid mail to the owners of the parts into which the parcel is divided.

(3) The engineer in making the apportionment shall have regard to the part of the parcel affected by the drainage works, and shall make the apportionment in writing and file it with the clerk of the local municipality who shall attach it to the original assessment and shall send, by prepaid mail, a copy thereof to each of such owners, and, subject to subsection (5), the apportionment is binding upon the lands assessed.
(4) The costs, including the fees of the engineer, shall be borne and paid by the parties in the manner fixed or apportioned by the engineer or, on appeal, by the Tribunal. 1975, c. 79, s. 65 (1-4).

(5) Any such owner who is dissatisfied with such apportionment and who is assessed for a sum greater than $500 may appeal to the Tribunal within forty days after the date a copy of the apportionment is sent to him by the clerk. 1975, c. 79, s. 65 (5); 1980, c. 1, s. 16.

(6) When the owners of the subdivided land mutually agree on the share of the drainage assessment that each should pay, they may enter into a written agreement and file it with the clerk of the local municipality and, if the agreement is approved by the council by resolution, no engineer need be instructed under subsection (1). 1975, c. 79, s. 65 (6).

66.—(1) Where an owner of land that is not assessed for a drainage works subsequently connects the land with the drainage works for the purpose of drainage or where the nature or extent of the use of a drainage works by land assessed for the drainage works is subsequently altered, an engineer appointed by the initiating municipality for the purpose shall make an inspection and assess the land for a just proportion of the drainage works, regard being had to any compensation paid to the owner of such land in respect of the drainage works, but no person shall connect such land to the drainage works without the approval of the council of the municipality. 1975, c. 79, s. 66 (1); 1980, c. 1, s. 17 (1).

(2) The clerk of the initiating municipality shall forthwith send a copy of the assessment to the owners of land assessed under subsection (1), and any owner who is so assessed for a sum greater than $500 and is dissatisfied with the assessment may appeal to the Tribunal within forty days after the date the notice is sent to him by the clerk. 1980, c. 1, s. 17 (2).

(3) The amount collected under subsection (1) shall be credited to the account of the drainage works and shall be used only for the improvement, maintenance or repair of the whole or any part of the drainage works. 1975, c. 79, s. 66 (2).

67. Any agreement on the part of a tenant to pay the rates or taxes in respect of the demised land does not include the charges and assessments for a drainage works unless the agreement in express terms so provides, but, in cases of contract to purchase or of leases giving the lessee an option to purchase, the charges and assessments for a drainage works, in connection with which proceedings were commenced under this Act after the date of the contract or lease and which have
already been paid by the owner, shall in the absence of any agreement to the contrary, be added to the price and shall be paid by the purchaser or the lessee where he exercises his option to purchase, but the amount still unpaid on the cost of the drainage works and charged against the lands shall be borne by the purchaser unless otherwise provided by the conveyance or agreement. 1975, c. 79, s. 67.

68. Where compensation has been paid to the owner of any land under section 32 or 33, the clerk of the local municipality shall cause to be registered in the proper land registry office a copy of the by-law adopting the report, exclusive of the plans, profiles and specifications of the drainage works, together with a statement of the amount paid and a description of the land in respect of which the amount was paid in the Form prescribed in the regulations. 1980, c. 1, s. 18.

69.—(1) Where a drainage works or a part thereof is to be constructed, improved, maintained or repaired upon, along, adjoining, under or across the lands, permanent way, transmission lines, power lines, wires, conduits or other permanent property of a public utility or road authority, the public utility or road authority may construct, improve, maintain or repair such drainage works or part.

(2) Where the public utility or road authority does not exercise its powers under subsection (1) or does not complete such drainage works or part within a reasonable time and without unnecessary delay, such drainage works or part may be completed by the initiating municipality in the same manner as any other drainage works. 1975, c. 79, s. 69.

70. The fees and expenditures of the engineer form part of the cost of the drainage works. 1975, c. 79, s. 70.

71. The account of the engineer shall be set out in such detail as the council of the local municipality that appointed him may require. 1975, c. 79, s. 71.

72.—(1) The council of the local municipality, within forty days after the engineer’s account is presented to the clerk of the municipality, may, on notice to the engineer, apply to the Tribunal, which shall review the account and make any alteration it considers just.

(2) Where the account as confirmed or altered by the Tribunal exceeds $1,000, either party may, on notice to the other party, appeal the decision of the Tribunal to the referee, whose decision is final.
(3) In any application made under subsection (1), it shall not be necessary to notify all persons assessed for the drainage works. 1975, c. 79, s. 72.

73. (1) Except where otherwise provided in this Act or by a decision on an appeal, the cost of any application, reference or appeal and the cost of temporary financing for the construction, improvement, repair and maintenance of a drainage works, shall form part of the cost of the drainage works.

(2) The cost of council meetings and special council meetings shall not be included in the cost of the drainage works.

(3) The council of a local municipality may by by-law provide for payment to the clerk of the municipality of reasonable fees or other remuneration for services performed by him in carrying out the provisions of this Act, but such fees or other remuneration shall not be deemed to form part of the cost of the drainage works. 1975, c. 79, s. 73.

MAINTENANCE, REPAIR AND IMPROVEMENT

74. Any drainage works constructed under a by-law passed under this Act or any predecessor of this Act, relating to the construction or improvement of a drainage works by local assessment, shall be maintained and repaired by each local municipality through which it passes, to the extent that such drainage works lies within the limits of such municipality, at the expense of all the upstream lands and roads in any way assessed for the construction or improvement of the drainage works and in the proportion determined by the then current by-law pertaining thereto until, in the case of each municipality, such provision for maintenance or repair is varied or otherwise determined by an engineer in a report or on appeal therefrom. 1975, c. 79, s. 74.

75.—(1) The council of any local municipality undertaking the repair of a drainage works without the report of an engineer, shall, before commencing the repairs,

(a) give two readings to a by-law for undertaking such repairs, which by-law shall recite the description, extent and estimated cost of the repairs to be done and the amount to be contributed therefor by each local municipality affected by the drainage works and shall be known as a provisional by-law; and
(b) serve upon the head or clerk of any municipality liable to contribute any portion of the cost of such repairs a copy of the provisional by-law, and the council of any municipality so served may, within forty days thereafter, appeal from such by-law to the Tribunal on the ground that work provided for in the by-law is unnecessary or that such drainage works has never been completed through the default or neglect of the municipality whose duty it was to do the work.

(2) The council of every municipality served with a copy of the provisional by-law shall, forthwith after the time for appealing from such by-law has expired and there are no appeals or after all appeals have been decided, pass a by-law to raise the amount assessed against lands and roads in the municipality, as stated in the provisional by-law or as determined on appeal therefrom, and shall pay over such amount within a reasonable time to the treasurer of the initiating municipality. 1975, c. 79, s. 75 (1, 2).

(3) The council of any municipality shall not be required to assess and levy the amount charged for maintenance or repair of a drainage works more than once in every five years if the total expense incurred does not exceed the sum of $5,000, in which case sections 64 and 65 of the Ontario Municipal Board Act do not apply. 1975, c. 79, s. 75 (3); 1980, c. 1, s. 19.

76.—(1) The council of any local municipality liable for contribution to a drainage works in connection with which conditions have changed or circumstances have arisen such as to justify a variation of the assessment for maintenance and repair of the drainage works may make an application to the Tribunal, of which notice has been given to the head of every other municipality affected by the drainage works, for permission to procure a report of an engineer to vary the assessment, and, in the event of such permission being given, such council may appoint an engineer for such purpose and may adopt the report but, if all the lands and roads assessed or intended to be assessed lie within the limits of one local municipality, the council of that municipality may procure and adopt such report without such permission. 1975, c. 79, s. 76 (1).

(2) The proceedings upon such report, excepting appeals, shall be the same, as nearly as may be, as upon the report for the construction of the drainage works. 1980, c. 1, s. 20.

(3) Any council served with a copy of such report may, within forty days of such service, appeal to the Tribunal.
from the finding of the engineer as to the portion of the cost of the drainage works for which the municipality is liable.

(4) Any owner of land assessed for maintenance or repair may appeal from the assessment in the report on the grounds and in the manner provided by section 52 in the case of the construction of the drainage works.

(5) An assessment determined under this section shall thereafter, until it is further varied, form the basis of any assessment for maintenance or repair of the drainage works affected thereby. 1975, c. 79, s. 76 (3-5).

77.—(1) The council of any local municipality whose duty it is to maintain and repair a drainage works for which only lands and roads within or under the jurisdiction of the municipality are assessed may, after the completion of the drainage works, without the report of an engineer, upon a pro rata assessment on the lands and roads as last assessed for the construction, maintenance or repair of the drainage works, make improvements thereto by deepening, widening or extending the drainage works to an outlet, provided the cost of such deepening, widening or extending is not more than $4,500, but the amount expended may be increased to 20 per cent of the initial cost of the drainage works upon receiving approval as set out in the requirements for a petition of those parties eligible to sign a petition under section 4.

(2) Where any road authority desires to relocate a drainage works or part thereof that is on or adjacent to a road under its jurisdiction, upon the report of an engineer appointed by the municipality whose duty it is to maintain and repair the drainage works that the drainage works or part thereof can be moved to a specified new location without impairing the capacity or efficiency of such drainage works or adversely affecting any person or property, the council of a local municipality may authorize such relocation within the boundaries of the municipality at the expense of the road authority. 1975, c. 79, s. 77.

(3) Where the relocation of a drainage works or part thereof referred to in subsection (2) is to be effected within the lands under the jurisdiction of the road authority, the engineer may prepare a written opinion instead of a report. 1980, c. 1, s. 21.

78.—(1) Where, for the better use, maintenance or repair of any drainage works constructed under a by-law passed under this Act or any predecessor of this Act, or of lands or roads, it is considered expedient to change the
course of the drainage works, or to make a new outlet for
the whole or any part of the drainage works, or to construct
a tile drain under the bed of the whole or any part of the
drainage works as ancillary thereto, or to construct, recon-
struct or extend embankments, walls, dykes, dams, reser-
voirs, bridges, pumping stations and other protective works
as ancillary to the drainage works, or to otherwise improve,
extend to an outlet or alter the drainage works or to cover
the whole or any part of it, or to consolidate two or more
drainage works, the council of any municipality whose duty
it is to maintain and repair the drainage works or any part
thereof may, without the petition required in section 4 but
on the report of an engineer appointed by it, undertake and
complete the drainage works as set forth in such report.

(2) An engineer shall not be appointed under subsection
(1) until thirty days after a notice advising of the proposed
drainage works has been sent by prepaid mail to the
secretary-treasurer of each conservation authority that has
jurisdiction over any of the lands that would be affected.

(3) The engineer has all the powers and shall perform all
the duties of an engineer appointed with respect to the
construction of a drainage works under this Act. 1975,
c. 79, s. 78 (1-3).

(4) All proceedings, including appeals, under this section shall
be the same as on a report for the construction of a drainage works.
1980, c. 1, s. 22.

79.—(1) Upon forty-five days notice in writing served by any
person affected by the condition of a drainage works, upon the
head or clerk of the local municipality whose duty it is to maintain
and repair the drainage works, the municipality is compellable by
an order of the referee to exercise the powers and to perform the
duties conferred or imposed upon it by this Act as to maintenance
and repair or such of the powers and duties as to the referee
appears proper, and the municipality is liable in damages to the
owner whose property is so injuriously affected. 1975, c. 79,
s. 79 (1); 1980, c. 1, s. 23 (1).

(2) Notwithstanding subsection (1), the local municipality
whose duty it is to maintain and repair drainage works shall
not become liable in damages to any person affected by reason of
the non-repair of the drainage works until after service by or on
behalf of such person of the notice referred to in subsection (1)
upon the head or clerk of the municipality, describing with
reasonable certainty the alleged lack of maintenance and repair of
the drainage works. 1975, c. 79, s. 79 (2); 1980, c. 1, s. 23 (2).
(3) The local municipality whose duty it is to maintain and repair a drainage works is not liable in damages for any injury caused by reason of a drainage works being blocked by snow or ice and overflowing the lands of any person without negligence on the part of the municipal corporation. 1975, c. 79, s. 79 (3).

80.—(1) When a drainage works becomes obstructed by a dam, low bridge, fence, washing out of a private drain, or other obstruction, for which the owner or occupant of the land adjoining the drainage works is responsible, so that the free flow of the water is impeded thereby, the persons owning or occupying the land shall, upon reasonable notice in writing given by the council of the local municipality whose duty it is to maintain and repair the drainage works or by the drainage superintendent appointed by the council, remove such obstruction and, if it is not so removed within the time specified in the notice, the council or the drainage superintendent shall forthwith cause it to be removed, and the cost thereof is payable to the municipality by the owner or occupant of the land.

(2) If the cost of removing the obstruction is not paid to the local municipality by the owner or occupant of the land forthwith after the completion of the work, the council may pay the cost, and the clerk of the municipality shall place the amount of cost upon the collector’s roll against such land and such amount shall be collected in the same manner as real property taxes. 1975, c. 79, s. 80.

81. The council, by by-law or resolution, shall direct the drainage superintendent to remove from any drainage works all weeds and brushwood, fallen timber or other minor obstructions for which the owner or occupant of the lands adjacent to the drainage works may not be responsible, and the cost of such work is chargeable as part of the cost of maintenance of the drainage works. 1975, c. 79, s. 81.

82.—(1) A municipality in which a drainage works or part thereof is situate may bring an action for damages against any person who destroys or injures in any way a drainage works, including any bench mark or permanent level, and any damages ordered by the referee to be paid shall be paid to the municipality and used for the construction, improvement, maintenance or repair of the drainage works.

(2) Every person who obstructs, fills up or injures or destroys by any means a drainage works is guilty of an offence and on conviction, in addition to his liability in damages, is liable to a fine of not more than $1,000 or to imprisonment for a term of not more than thirty days, or to both. 1975, c. 79, s. 82.
83.—(1) Except as authorized by a by-law of the initiating municipality approved by the Ministry of the Environment, no person shall discharge or deposit or permit to be discharged or deposited into any drainage works any liquid, material or substance other than unpolluted drainage water.

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than $1,000. 1975, c. 79, s. 83.

84.—(1) Upon the written request of three-quarters of the owners of land assessed for benefit in respect of a drainage works, who, according to the last revised assessment roll, own not less than three-quarters of the area assessed for benefit as shown in the by-law or by-laws under which the drainage works exist, asking for the abandonment of such drainage works or a part thereof, the council of the initiating municipality shall forthwith notify all owners of land assessed for the drainage works by prepaid mail, at their addresses as shown in the last revised assessment roll, of its intention to abandon such drainage works, or such part thereof as is specified in the notice, unless any owner within ten days of the mailing of such notice, gives to the clerk of the municipality written notice that he requires a report of an engineer to be made on such proposed abandonment.

(2) The council of the initiating municipality may give notice as in subsection (1) of its intention to abandon a drainage works or such part thereof as is specified in the notice without any written request.

(3) If, within such period of ten days, any owner notifies the clerk, the council shall appoint an engineer to examine the drainage works and report his recommendations as to the proposed abandonment, any necessary work in connection therewith, the sale of any assets, the cost of abandonment and all other appropriate matters and shall assess all costs, including his own compensation, and damage allowances against persons liable to assessment in connection with the drainage works in such proportions as appear just.

(4) All proceedings, including appeals, with respect to a report under subsection (1) shall be the same with necessary modifications as on a report for the construction of a drainage works.

(5) If no notice is mailed to the clerk in accordance with subsection (1) or if the engineer's report, as it may be altered on appeal, recommends the abandonment of the drainage works, the council may by by-law abandon the drainage works.
and thereafter the municipality has no further obligation with respect to the drainage works.

(6) Any money remaining to the credit of the drainage works after it is abandoned shall be divided pro rata among the owners of lands and roads assessed therefore. 1975, c. 79, s. 84.

GRANTS

85. Grants may be made in respect of,

(a) assessments made under this Act upon lands used for agricultural purposes,

(i) for drainage works undertaken in accordance with section 4, 74 or 78 where a report of an engineer describing the current work has been adopted in accordance with this Act, and

(ii) for maintenance, repair and minor improvements undertaken on the recommendation of the drainage superintendent within the budgeting limitations established by the Minister for that municipality;

(b) costs incurred by municipalities in the employment of a drainage superintendent; and

(c) the total cost of preparing a preliminary report exclusive of the cost of preparing any benefit cost statement and any environmental appraisal. 1975, c. 79, s. 85.

86.—(1) Subject to subsection (2), grants shall not be made in respect of assessments made under this Act upon lands owned by Canada, Ontario or a municipality or in respect of the assessment of the cost of lateral drains.

Exception

(2) Grants may be made in respect of lands owned by Ontario and leased for agricultural purposes to a lessee with an option to purchase. 1975, c. 79, s. 86.

Payment of grant

87.—(1) The Minister, upon receipt of a duly completed application for a grant, may pay out of such moneys as are appropriated therefor by the Legislature to the treasurer of the initiating municipality a grant of,
(a) where the drainage works is in a municipality within a county or, subject to clause (b), a regional municipality, 33\(\frac{1}{3}\) per cent of the assessments eligible for a grant under section 85; or

(b) where the drainage works is in a municipality or a regional or district municipality within a territorial district or a provisional county, 66\(\frac{2}{3}\) per cent of the assessments eligible for a grant under section 85.

(2) Where a drainage works is in territory without municipal organization, an amount not exceeding 80 per cent of the assessments eligible for a grant under section 85 in respect of such drainage works may be paid by the Minister out of the moneys appropriated therefor by the Legislature.

(3) Where one or more municipalities employ a drainage superintendent who has qualifications satisfactory to the Minister, the Minister may direct that 50 per cent of the costs incurred by the municipality or municipalities in the employment of such superintendent shall be paid out of the moneys appropriated therefor by the Legislature. 1975, c. 79, s. 87.

88.—(1) Upon the practical completion of the drainage works and after the time for appealing against assessments has expired and there are no appeals or after all appeals against assessments have been decided, the council of the initiating municipality shall forward to the Director an application for a grant in such form as is provided by the Director.

(2) No grant shall be paid in respect of interest charges on any drainage works accruing after 120 days from the completion thereof as certified by the engineer or drainage superintendent. 1975, c. 79, s. 88.

89.—(1) Where the drainage works is in two or more municipalities, the grant shall be distributed by the treasurer of the initiating municipality among all such municipalities in the proportion that the total of the assessments eligible for a grant in each municipality bears to the total of all assessments eligible for a grant in all of the municipalities.

(2) The treasurer of each municipality shall apply the amount of the grant received by that municipality to reduce the assessment on each parcel of land in the municipality.
Reduction of grant

90. The Minister may reduce or withhold a grant on any drainage works if in his opinion the costs other than the contract price are excessive. 1975, c. 79, s. 90.

DIRECTOR

91. The Minister may appoint a Director for the purposes of this Act. 1975, c. 79, s. 91.

Persons to advise and assist

92. The Minister may designate such persons as he considers necessary to advise and assist municipalities and engineers in the application and administration of this Act and any such person who is not a member of the public service of Ontario shall be paid such remuneration as the Lieutenant Governor in Council may determine, together with his reasonable expenses. 1975, c. 79, s. 92.

DRAINAGE SUPERINTENDENT AND COMMISSIONERS

93.—(1) The council of a local municipality may by by-law appoint a drainage superintendent,

(a) to initiate and supervise the maintenance and repair of any drainage works; and

(b) to assist in the construction or improvement of any drainage works,

and to report thereon to council and may provide for fees or other remuneration for services performed by him in carrying out the provisions of this Act, but such fees or other remuneration shall not be deemed to form part of the cost of the drainage works, and shall be paid from the general funds of the municipality.

(2) Where no drainage superintendent is appointed under subsection (1), the council may by by-law appoint one or more commissioners,

(a) to assist the engineer in the construction or improvement of a drainage works; and

(b) to supervise the maintenance of any drainage works,

and to report thereon to council and may provide for fees or other remuneration for services performed by him under this subsection, but such fees or other remuneration shall not be deemed to form part of the cost of the drainage
works, and shall be paid from the general funds of the municipality. 1975, c. 79, s. 93.

94.—(1) The drainage superintendent shall inspect every drainage works for which the municipality is responsible and shall report periodically to council on the condition of the drainage works in the municipality. 1980, c. 1, s. 24.

(2) Two or more municipalities may appoint the same person to be drainage superintendent within each municipality. 1975, c. 79, s. 94 (2).

95.—(1) For the better maintenance and repair of drainage works by embanking, pumping or other mechanical operations, the council of the municipality initiating the drainage works may by by-law,

(a) appoint one or more commissioners with power to,

(i) enter into all necessary and proper contracts for the purchase of fuel, erection or repairs of buildings and purchase and repairs of machinery, and

(ii) do all other things necessary for successfully operating the drainage works and for keeping the embankment thereof in repair as may be set forth in the by-law appointing him; and

(b) provide for defraying the annual cost of maintaining and operating the drainage works by assessment upon the lands and roads in any way liable to assessment therefor.

(2) The fees or other remuneration of a commissioner shall form part of the cost of the maintenance and repair of the drainage works.

(3) The drainage superintendent and the commissioner have the same powers as to entry on land as are given to the engineer and his assistants under subsection 12 (1). 1975, c. 79, s. 95.

96. Every person who wilfully interferes with or obstructs a drainage superintendent or a commissioner in the exercise of his powers under this Act is guilty of an offence and on conviction is liable to a fine of not more than $1,000. 1980, c. 1, s. 25.
97.—(1) Subject to subsections (3), (4) and (5), a court of revision shall consist of three or five members appointed by the council of the initiating municipality and such members other than members of the council may be paid such remuneration and expenses as the council may by by-law provide. 1980, c. 1, s. 26 (1).

(2) Every such member shall be a person eligible to be elected a member of council or shall be a member of council.

(3) Where the lands assessed for the drainage works extend from the initiating municipality into a neighbouring municipality, the court of revision shall consist of two members appointed by the council of the initiating municipality, of whom one shall be chairman and one member appointed by the council of each of the neighbouring municipalities and the court shall hear and rule on appeals as if the entire area affected by the drainage works were in one municipality. 1975, c. 79, s. 96 (2, 3).

(4) A majority of the members of the court of revision shall constitute and, notwithstanding the decision of any court, shall be deemed always to have constituted a quorum.

(5) A quorum of the court of revision is sufficient and, notwithstanding the decision of any court, shall be deemed always to have been sufficient to exercise all of the jurisdiction and powers of the court of revision. 1980, c. 1, s. 26 (2).

THE ONTARIO DRAINAGE TRIBUNAL

98.—(1) The Ontario Drainage Tribunal is continued and shall be composed of a chairman and such number of vice-chairmen and other members as shall be appointed by the Lieutenant Governor in Council.

(2) Three members of the Tribunal designated by the chairman, one of whom shall be a barrister entitled to practice in Ontario, shall constitute a quorum and have all of the jurisdiction and powers of the Tribunal.

(3) The members of the Tribunal who are not members of the public service of Ontario shall be paid such remuneration as the Lieutenant Governor in Council may determine, together with their reasonable expenses.
(4) The Tribunal may,

(a) hold sittings at any place in Ontario and in more than one place at the same time; and

(b) procure reports from engineers and other professional persons in order to assist the Tribunal in reaching a decision.

(5) Subject to the approval of the Lieutenant Governor in Council, the Tribunal may make rules governing its practice and procedure and the exercise of its powers.

(6) The clerk of the initiating municipality shall be the clerk of the Tribunal.

(7) The Tribunal may from time to time employ stenographic reporters to report hearings before the Tribunal and may fix their fees and such fees shall be included in the costs of the hearing and shall be borne and paid as the Tribunal may direct.

(8) Where the sittings of the Tribunal are to be held in a municipality, the municipality shall provide a suitable room for holding a hearing.

(9) The Tribunal shall send by registered mail addressed to the parties to any proceedings who took part in the hearing, at their addresses last known to the Tribunal and to the Minister, a copy of its final decision and order, if any, in the proceedings.

(10) The costs of any proceedings before the Tribunal shall be paid by or apportioned between the parties in such manner as the Tribunal considers proper, and where costs are ordered to be paid, the order for payment thereof may be filed in any small claims court having jurisdiction in the municipality and is enforceable as a judgment or order of such court. 1975, c. 79, s. 97 (1-10).

(11) The costs chargeable or to be awarded in any proceedings may include the costs of witnesses and of procuring their attendance, the costs of secretarial staff and such other costs as the Tribunal may direct. 1980, c. 1, s. 27.

99. In any application, appeal or reference to the Tribunal, the action shall be commenced by serving notice upon the council of the initiating municipality and the clerk shall forthwith record the notice and except as otherwise pro-
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vided send a copy of the notice to the Tribunal and to all persons assessed for the drainage works. 1975, c. 79, s. 98.

**Extension of time**

**100.** The Tribunal, in any case that it considers proper, may extend the time otherwise limited for application, appeal or reference. 1975, c. 79, s. 99.

**Decision final**

**101.** In any application, appeal or reference under sections 8, 10, 48, 49, 50, 54, 64, 65, 66 and 75 the decision of the Tribunal is final. 1980, c. 1, s. 28.

**REFEREE**

**Appointment of referee**

**102.**—(1) The Lieutenant Governor in Council may appoint a referee for the purposes of this Act.

(2) The Lieutenant Governor in Council from time to time may appoint an acting referee or referees for the purposes of this Act, and an acting referee has the same powers and duties as the referee. 1975, c. 79, s. 101 (1, 2).

(3) The referee or an acting referee shall be a justice of the Supreme Court, a judge of a county court or a barrister of at least ten years standing at the bar of Ontario. 1976, c. 8, s. 2 (1).

**Remuneration**

(4) Notwithstanding any other Act, the referee or an acting referee shall be paid such remuneration as the Lieutenant Governor in Council may determine, together with his reasonable expenses and expenses for secretarial services. 1975, c. 79, s. 101 (4).

(5) No referee or acting referee shall practise as a solicitor or barrister in any matter arising under this Act or act as legal agent or adviser in any such matter. 1976, c. 8, s. 2 (2).

**Referee not to practise under Act**

**103**—(1) Where an application or appeal is made to the referee, he shall give an appointment to the parties to proceed therewith at such place and time and in such manner as to him may seem proper, but, unless the parties otherwise consent, a hearing shall be in the county or one of the counties in which the drainage works is or is to be situate.

(2) When an appointment is given by the referee for a hearing in any municipality where a court house is situate, he has in all respects the same authority as a judge of the Supreme Court with respect to the use of the court house or other place or apartments therein. 1975, c. 79, s. 102.
104.—(1) The clerk of the county court shall be the clerk of
the court of the referee and shall take charge of and file all the
exhibits, and is entitled to the same fees for filings and for his
services and for certified copies of decisions or reports as for
similar services in the county court.

(2) The clerk of the court is entitled to such fees as the
referee may direct for his attendance at the court, and such
fees shall be included in the costs and shall be borne and
paid as the referee may direct.

(3) In the absence of the clerk of the county court, the
referee may appoint some other person to act as clerk of the
court of the referee for the purpose of the trial and for taking
charge of and filing all exhibits, and the person so appointed
while so acting has the same power as the clerk of the
county court and is entitled to such fees as the referee may
direct for his attendance at the court, and such fees shall
be included in the costs and shall be borne and paid as the
referee may direct.

(4) The referee may from time to time employ stenographic
reporters to report hearings and trials before the referee and
fix their fees, and such fees shall be included in the costs and
shall be borne and paid as the referee may direct. 1975, c. 79,
s. 103.

105. Sheriffs, deputy sheriffs, constables and other peace
officers shall aid, assist and obey the referee in the exercise of
the jurisdiction conferred by this Act whenever required so to
do, and shall, upon the certificates of the referee, be paid such
fees as they are entitled to for similar services at the
sittings of the Supreme Court for the trial of causes. 1975, c. 79, s. 104.

106.—(1) The referee has original jurisdiction,

(a) to entertain any appeal with respect to the report
of the engineer under section 47;

(b) to determine the validity of, or to confirm, set aside
or amend any petition, resolution of a council, pro-
visional by-law or by-law relating to a drainage
works under this Act or a predecessor of this Act;

(c) to determine claims and disputes arising under this
Act, including, subject to section 120, claims for
damages with respect to anything done or purporting
to have been done under this Act or a predecessor
of this Act or consequent thereon;
(d) to entertain applications for orders directing to be done anything required to be done under this Act;

(e) to entertain applications for orders restraining anything proposed or purporting to be done under this Act or a predecessor of this Act; and

(f) over any other matter or thing in relation to which application may be made to him under this Act.

(2) Subject to section 101, the referee has jurisdiction to hear appeals from any decision or order of the Tribunal and for such purpose may make any order that the Tribunal might have made and may substitute his opinion for that of the Tribunal.

(3) The referee has jurisdiction to entertain and dispose of any interlocutory application relating to any matter otherwise within his jurisdiction and his order thereon is final.

(4) The referee has power to determine all questions of fact or law that it is necessary to determine for the purpose of disposing of any matter within his jurisdiction and to make such decision, order or direction as may be necessary for such purpose. 1975, c. 79, s. 105.

107.—(1) The referee may, with the approval of the Lieutenant Governor in Council, make rules regulating the practice and procedure to be followed in all proceedings before him under this Act and may prescribe tariffs and fees therefor.

(2) The referee may give directions relating to the conduct of proceedings before him and as to the persons who shall be parties to such proceedings. 1975, c. 79, s. 106.

108. Costs shall be taxed by the referee, or he may direct the taxation thereof by the clerk of the county court with whom the papers are filed or by a taxing officer of the Supreme Court. 1975, c. 79, s. 107.

109. The costs of any proceedings before the referee are in the discretion of the referee. 1975, c. 79, s. 108.

110. In the absence of other provisions, the tariff of costs in any application or proceeding under this Act shall be that of the court that would have jurisdiction to try a civil action involving a similar amount of money or type of proceeding. 1975, c. 79, s. 109.
111.—(1) Proceedings for the determination of claims and disputes and for the recovery of damages, or for an order directing or restraining the doing of any act or thing shall be instituted by serving ten clear days notice setting forth the grounds of the claim upon all persons concerned.

(2) A copy of the notice with an affidavit of service thereof shall be filed with the clerk of the county court of the county in which the initiating municipality is situate, and the notice shall be filed and served within two years from the time the cause of complaint arose. 1975, c. 79, s. 110.

112. All affidavits intended to be used in support of a motion shall be filed with the clerk of the county court not fewer than five days before the return day of the motion. 1975, c. 79, s. 111.

113. The referee may, where he considers it proper, extend the time otherwise limited for appeals or other proceedings. 1975, c. 79, s. 112.

114. When the referee proceeds partly on view or on any special knowledge or skill possessed by him, he shall put in writing a statement thereof sufficiently full to allow the Divisional Court to form a judgment of the weight that should be given thereto, and he shall state as part of his reasons the effect given by him to such statement. 1975, c. 79, s. 113.

115. The decision of the referee, with the evidence, exhibits and statement, if any, of inspection or of technical knowledge and the reason for his decision, shall be filed in the office of the clerk of the county court in the county in which the initiating municipality is situate, and notice of the filing shall forthwith be given by the clerk, by prepaid mail, to the solicitors of the parties appearing by solicitor and to the other parties not represented by a solicitor, and also to the clerk of each municipality affected. 1975, c. 79, s. 114.

116. A copy of the decision certified by the referee or clerk of the court shall be sent or delivered,

(a) to the Minister without charge; and

(b) to the clerk of every municipality interested in the drainage works in question upon receipt of the sum chargeable therefor. 1975, c. 79, s. 115.
117. The provisional by-law or the by-law of the initiating municipality and of any other municipality interested shall be amended so as to incorporate and carry into effect the decision of the referee or such decision as varied on appeal, as the case may be. 1975, c. 79, s. 116.

118.—(1) Except as provided by subsections (2), (3) and (4), all damages and costs payable by a municipality and arising from proceedings taken under this Act shall be levied upon the lands and roads in any way assessed for the drainage works for construction, improvement, maintenance or repair in such manner as the referee or court may determine, and may be assessed, levied and collected in the same manner as rates assessed, levied and collected for maintenance under this Act.

(2) Where such damages and costs become payable owing to any improper action, neglect, default or omission on the part of the council of any municipality or of any of its officers or employees in the construction, improvement, maintenance or repair of the drainage works or in carrying out the provisions of this Act, the referee or court may direct that the whole or any part of such damages and costs shall be borne by the municipality and be payable out of the general funds thereof.

(3) Where in any such proceedings by or against a municipality a settlement is made, the damages and costs payable under the terms of the settlement by any municipality shall be borne and paid as directed by the referee or court, and in making such direction, the referee or court shall have regard to the provisions of subsection (2).

(4) Where, in the opinion of the referee or court, damages and costs have become payable by reason of the insufficiency of the capacity or outlet of a drainage works and it is necessary in order to prevent a continuance of such damage to improve the drainage works, the referee or court may permit the council of the municipality to add such damages and costs to the engineer’s estimate of the cost of any such improvement. 1975, c. 79, s. 117.

119. Where an action is brought or is pending before the court of revision or the Tribunal or the referee and the matter should properly be heard by one of the other tribunals, the action may be transferred to the other tribunal without invalidating the proceedings provided the action was launched within the time limits prescribed in this Act. 1975, c. 79, s. 118.
120.—(1) Where an action is brought or is pending and the court in which the action is brought or is pending or a judge thereof is of opinion that the relief sought therein is properly the subject of a proceeding under this Act or that it may be more conveniently tried before and disposed of by the referee, the court or judge may, on the application of either party, at any stage of the action make an order transferring it to the referee on such terms as appear just, and the referee shall thereafter give directions for the continuance of the action before him.

(2) This section applies only where the action is brought within the period limited by this Act for taking proceedings on notice. 1975, c. 79, s. 119.

APPEAL TO DIVISIONAL COURT

121. Except as otherwise provided in this Act, the decision of the referee or acting referee may be appealed from to the Divisional Court in accordance with the rules of court within thirty days after the filing thereof with the county court clerk or within such further time as the referee or Divisional Court or a judge thereof may allow. 1975, c. 79, s. 120.

GENERAL

122.—(1) Where it is considered necessary or expedient to extend a drainage works constructed under this Act from Ontario into or through lands in an adjoining province, or to extend a drainage works from an adjoining province into or through lands in Ontario, the Lieutenant Governor in Council may authorize the Minister to enter into an agreement with a designated officer of the adjoining province as to the proportion of the cost of any drainage works in the adjoining province to be borne and paid by Ontario and as to the proportion of the cost of any drainage works in Ontario to be borne and paid by the adjoining province.

(2) Where such a drainage works extends from Ontario into or through lands in an adjoining province, the Minister may order a local municipality in Ontario in which the lands affected by the drainage works are situate to provide funds to pay for the proportion of the cost of the drainage works in the adjoining province to be borne and paid by Ontario, and thereupon this Act applies with necessary modifications to such drainage works.
(3) Where a drainage works extends from an adjoining province into or through lands in Ontario, the Minister may order a local municipality into which the drainage works extends to provide for the construction of the necessary drainage works, and thereupon this Act applies with necessary modifications to such drainage works, and the contribution to the drainage works from the other province shall be paid to such local municipality on the completion of the drainage works. 1975, c. 79, s. 121.

123. The Minister in his discretion and from time to time may prescribe the manner in which a drainage works shall be initiated and carried out in territory without municipal organization and the manner in which and the terms and conditions under which grants may be made. 1975, c. 79, s. 122.

124. Where the Minister declares that an emergency exists, the council of a municipality may authorize emergency work under this Act before obtaining and adopting an engineer's report. 1975, c. 79, s. 123.

125. The Lieutenant Governor in Council may make regulations prescribing forms and providing for their use. 1975, c. 79, s. 124.