

Dear Land Owner,

Your property has been identified in the assessed lands of the Lots 3 & 4, Roddy-Patterson Award Drain. Please be advised that this letter is informative in nature and should in no way be considered enforcement. It is only intended to advise the land owner of the existence of the Award drain, and explain responsibilities under the current *Ontario Drainage Act, R.S.O. 1990, c. D.17*

The *Drainage Act* is administered by the Ontario Ministry of Agriculture, Food and Rural Affairs (OMAFRA). Below is information from an OMAFRA 'factsheet' regarding Award drains.

What is an award drain?

Physically, an award drain may look like any other drain. It can be a ditch or a pipe of some type.

Award drains have a different legal status than other drains – they were built under the authority of the Ditches and Watercourses Act. Under this Act, a person "requisitioned" the municipality for a drain, and an engineer – appointed by municipal council – investigated the drainage problem. If the engineer found that a ditch or pipe was required, a report was written to define a solution to the drainage problem. The responsibility for construction or maintenance of the drain was then assigned or "awarded" to each property owner directly involved.

Who is responsible for maintaining an award drain?

The property owners assigned or awarded sections of the drain are responsible for the maintenance of an award drain. Unlike municipal drains, the local municipality is not responsible for maintaining award drains, has no authority to enter onto land to perform the work and no means to recover cost.

Although the Ditches and Watercourses Act has been repealed, the responsibility for maintenance of award drains continues through subsection 3(18) of the Drainage Act which states:

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 petition under section 4.

So, if you have an award drain on your property, you are likely responsible for maintaining at least a portion of that drain. Before maintaining the drain, contact the local conservation authority and Ministry of Natural Resources to find out what other approvals may be needed to carry out the work.

How do I find out if I have an award drain on my property?

The Ditches and Watercourses Act required a copy of the engineer's report for the award drain be given to each property owner involved with the drain, and a copy filed with the municipality. The most recent award drain is about 50 years old, and municipal staff has changed, offices may have moved and municipalities may have amalgamated. Old records may have been lost or destroyed, making it very difficult to locate the engineer's award drain report. Here are some suggestions for where to look:

- check with the municipality;
- check with your neighbours, particularly with families who have lived in the area for a long period of time;
- check with the local historical society or municipal archives;
- check with the engineering firm that produced the report. If the engineering firm that produced the report is no longer in business, their records may have been passed to a current engineering firm – see if you can find the name of the engineering firm that currently holds these records.

How do I ensure my neighbour maintains the section of the award drain they are responsible for?

To initiate maintenance under the awarded drain, one property owner gives another property owner written notice that maintenance is required. If the property owner does not fulfill their responsibilities, there are at least several options to consider:

- initiate a civil lawsuit for damages based on the landowner's non-compliance with an agreement;
- initiate an appeal to the referee under subsections 3(18) and paragraph 106(1)(c) of the Drainage Act;
- petition under the Drainage Act to have the award drain made into a municipal drain.

Additional information can be found on OMAFRA's drainage website at:

<http://www.omafra.gov.on.ca/english/landuse/drain-pub.htm>

Please feel free to contact the below if you have any questions relating to the *Drainage Act*.

Mike Farquhar

Thank you,

Mike Farquhar

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