

Ditches and Water Courses Act

CHAPTER 132

OF THE

REVISED STATUTES, 1989

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An Act Respecting
Ditches and Water Courses

Short title

1 This Act may be cited as the Ditches and Water Courses Act. R.S., c. 132, s. 1.

Application

2 This Act shall apply to municipalities and incorporated towns, and shall also apply as well to deepening or widening any ditch or drain already existing as to making a new ditch or drain. R.S., c. 132, s. 2.

Interpretation

3 In this Act,

(a) "clerk" means municipal clerk in the case of a municipality, and town clerk in the case of a town;

(b) "council" means municipal council in the case of a municipality, and town council in the case of a town;

(c) "engineer" means a civil engineer, land surveyor, or such person as any council deems competent to perform the duties required under this Act;

(d) "municipality" includes town. R.S., c. 132, s. 3.

Municipal engineer

4 Every council shall name and appoint an engineer to carry out the provisions of this Act, and such engineer shall be and continue an officer of the municipality until his appointment is revoked by the council and another engineer appointed in his stead, who shall have authority as well to take as to continue any proceeding already commenced under this Act. R.S., c. 132, s. 4.

Maintenance of ditches

5 (1) In case of owners of lands, whether immediately adjoining or not, which would be benefited by making a ditch or drain, or by deepening or widening a ditch or drain already made, in a natural water course, or by making, deepening or widening a ditch or drain for the purpose of taking off surplus water or in order to enable the owners or occupiers thereof the better to cultivate or use the same, such several owners shall open and make, deepen or widen, a just and fair proportion of such ditch or drain, according to their several interests in the construction of the same; and such ditches or drains shall be kept and maintained so opened, deepened or widened by the said owners respectively, and their successors in such ownership, in such proportions as they have been so opened, deepened or widened, unless in consequence of altered

circumstances the engineer otherwise directs, which he is hereby empowered to do, upon application of any person interested, in the same form and manner as is hereinafter prescribed in respect to the original opening, deepening or widening, and in case the engineer finds no good reason for such application, all costs caused thereby shall be borne by the applicant and shall be collected as in this Act provided.

Outlet for ditch

(2) Every such ditch or drain shall be continued to a proper outlet, so that no lands, unless with the consent of the owner thereof, will be overflowed or flooded by the construction of any such ditch or drain, and it shall be lawful to construct such ditch or drain through one or any number of lots until the proper outlet is reached.

Consent

(3) Such consent shall be in writing and signed by the person consenting, and shall be filed with the clerk with the award, and may be recited or referred to therein.

Notice to repair

(4) Where a ditch or drain has been constructed under this Act, and any owner whose duty it is to maintain and keep in repair any portion of the ditch or drain neglects to keep such portion in a proper state of repair, any one of the owners who is liable for maintaining and keeping in repair any portion of such ditch or drain may, in writing, notify the owner who neglects to keep his portion of such ditch or drain in a proper state of repair, to have the same put in such repair, and to have the same completed within thirty days from the receipt of the notice.

Application to council

(5) The owner who serves the notice may, if the work has not been performed at the expiry of the thirty days, make application to the council to have the repairs carried out and completed.

Order for examination

(6) The council shall, when such application is made, order an examination of such portion of the ditch or drain as is complained of, to be made by the engineer, or by some other person to be appointed by the council, and who may be called the "inspector of drains and ditches".

Certificate of inspection

(7) The inspection shall be made not later than twelve days from the time of the ordering the same, and the engineer or inspector, as the case may be, shall within twelve days after making the inspection, file with the clerk a certificate stating whether the complaint is well founded or not, and wherein the ditch or drain requires repairing.

Repairs by council and disqualification

(8) If the engineer or inspector, as the case may be, certifies that the complaint is well founded, the council shall order him to proceed and let the work in the manner in this Act hereinafter provided for re-letting work, unless the owner has himself in the meantime completed such repairs in accordance with the report or certificate of the engineer or inspector.

Remuneration of inspector

(9) The provisions of this Act as to the inspection and payment of engineers or inspectors fees and cost of work shall apply, and the council may fix the remuneration of the inspector during the time he is engaged in the performance of any duties under this Act.

Restriction on appointment

- (10) A member of the council shall not be appointed inspector.

Fees

- (11) If the engineer or inspector decides that the complaint is not well founded, the person making the complaint shall pay the fees of the engineer or inspector, and if not paid by him they shall be paid by the council and charged as hereinafter provided.

Appeal

- (12) Any owner or person interested under proceedings taken under or by virtue of this Section shall have the right of appeal as provided by this Act where the amount involved exceeds the sum of twenty dollars. R.S., c. 132, s. 5.

Meeting

6 In case of dispute between owners respecting such proportions, any owner shall, before filing with the clerk the requisition as hereinafter provided by this Act, (Form C or to the like effect), serve upon the other owners or occupants of the lands to be affected a notice in writing signed by him (Form B or to the like effect), naming a day, hour and place convenient to the ditch or drain at which the parties are to meet and, if possible, agree upon the respective portions of the drain or ditch to be made, deepened or widened by each of them, the notice to be served not less than twelve clear days before the time of meeting, and in case at the meeting an agreement is come to between the parties, the agreement shall be reduced to writing (Form A or to the like effect), and shall be signed by all the parties, and shall, within four clear days from the signing thereof, be filed with the clerk of the municipality in which the land requiring the ditch or drain is situated, and the agreement may be enforced in the manner as an award of the engineer as hereinafter provided. R.S., c. 132, s. 6.

Requisition for meeting

7 (1) If the parties at the meeting do not agree, any owner may file with the clerk of the municipality in which the lands requiring such ditch or drain are situated, a requisition (Form C or to the like effect) shortly describing the ditch or drain to be made, deepened or widened, and naming the lands which will be affected thereby and the owners respectively, and requesting that the engineer appointed by the municipality for the purpose be asked to appoint a day in which he will attend at the time and place named in the requisition, which shall not be less than six or more than twelve clear days from the time of filing the same, and shall also at least four clear days before the time appointed therein serve upon all the persons named in such requisition a notice (Form D or to the like effect) requiring their attendance at the same time and place provided, nevertheless, that when it is necessary in order to obtain an outlet, that the drain or ditch shall pass through or partly through the lands of more than five owners (the owner first mentioned in this Section being one), the requisition shall not be filed unless

- (a) such owner first obtains the assent in writing thereto of (including himself) a majority of the owners affected or interested;
- (b) a resolution of the council of the municipality in which the greater portion of the work is to be done, approving of the scheme or proposed work, is first passed, after those interested have been heard or have had an opportunity to be heard by the council upon notice to that effect; or
- (c) the assent (by resolution) of the said council approving of the proposed extension to the lands of other interested persons is first passed after a hearing or notice as hereinbefore provided.

Additional parties

(2) When the engineer, as hereinafter provided, requires other persons whom he deems interested to be notified, he shall not assess or bring in without his or their assent more than one additional interested person when the majority of those so notified and interested are opposed to being so brought in or assessed. R.S., c. 132, s. 7.

Liability of occupant

8 An occupant, not the owner of land, notified in the manner provided by this Act, shall immediately notify the owner thereof and shall, if he neglects to do so, be liable for all damages suffered by such owner by reason of such neglect. R.S., c. 132, s. 8.

Hearing and award by engineer

9 (1) The clerk shall, after receiving the requisition, forthwith notify the engineer by registered letter, enclosing a copy of the requisition to him, and the engineer shall attend at the time and place named therein, shall examine the premises, and, if he deems proper, or if requested by any of the parties, shall hear evidence, and is hereby authorized to examine the parties and their witnesses on oath, and may administer an oath or affirmation, and if he finds the making, deepening or widening of the ditch or drain necessary, he shall, within thirty days after the day of meeting named in the requisition, make his award in writing (Form E, or to the like effect), specifying clearly the locality, description and course of the ditch or drain, point of commencement and termination of same, the portion of the ditch or drain to be constructed by the respective parties, and the time within which the work is to be done, the amount of his fees and other charges, and by whom to be paid, and he shall have power to adjourn the examination, and may require the notification and attendance of other parties whom he deems interested in the ditch or drain, such other parties to have at least four clear days notice of the time and place of attendance.

Limitation on area affected

(2) In no case shall the engineer include or assess lands lying more than fifty rods above the point of commencement of the ditch or drain upon the lands mentioned in the notice (Form B) provided for by this Act, nor lands on either side of the ditch or drain which lie more than fifty rods from the drain, and only so much within such fifty rods as having due regard to the nature of the locality and of the soil and the lay of the land, and its distance back from the ditch or drain, as will be benefited by the ditch or drain, and then only according to and in proportion to the benefit which the land will receive by such construction. R.S., c. 132, s. 9.

Construction awarded

10 (1) If it appears to the engineer that the owner or occupier of any tract of land is not sufficiently interested in the opening up of a ditch or drain to make him liable to construct any part thereof, and at the same time that it is necessary for the other parties that the ditch or drain should be continued across the tract, he may award the same to be constructed at the expense of the other parties, and after the award the other parties may open the ditch or drain across the tract at their own expense without being trespassers, but causing no unnecessary damage, and replacing any fences opened or removed by them.

Blasting awarded

(2) If it appears to the engineer that rock cutting is required to be done, the engineer may have the rock cut or blasted, by letting the contract by tender or otherwise, instead of requiring each person benefited to do his share of the work and the engineer shall, by his award, determine the sum which shall be paid by each of the persons benefited, which sums, unless forthwith paid, shall be added to the collectors roll, together with seven per cent added thereto, and the same shall thereupon become a charge against the lands of the persons so liable, and shall be collected in the same manner as other municipal or town rates. R.S., c. 132, s. 10.

Filing award

11 The engineer shall within thirty days from the day appointed by him, as hereinbefore provided, make and file his award, and any plan or profile of said work, with the clerk, and the award, plan and profile shall be official documents and may be given in evidence in any legal proceedings by copies certified by the clerk, and the clerk shall forthwith, upon the filing of the award, notify each of the persons affected thereby by registered letter or personal service of the filing of the same, and the clerk shall keep a book in which he shall record the names of the persons to whom he has sent notices, the addresses to which the same were sent, and the dates upon which the same were deposited in the post office or personally served. R.S., c. 132, s. 11.

Appeal

12 Any person dissatisfied with the award and affected thereby may, within fifteen clear days from the filing thereof, appeal therefrom to the judge of the county court for the county in which the lands in respect to which the proceedings are initiated are situated, and the proceedings on the appeal shall be as follows:

- (a) the appellant shall serve upon the clerk with whom the award is filed a notice in writing of his intention to appeal therefrom, shortly setting forth the grounds of appeal;
- (b) the clerk shall, after the expiration of the time for appeal, forward by registered letter or deliver a copy of the notice or notices of appeal, if there is more than one appeal, and a certified copy of the award, to the clerk of the county court for the county in which the land of the owner filing the requisition hereinbefore mentioned is situated, and the clerk of the county court shall immediately notify the judge of the appeal, whereupon the judge shall appoint a time for the hearing thereof, and if he thinks fit, order such sums of money to be paid by the appellant or appellants to the clerk of the county court as will be a sufficient indemnity against the costs of the appeal;
- (c) the judge shall appoint the time and place for hearing the appeal, and communicate the same to the clerk of the county court, who shall notify the engineer and all persons interested, in the manner provided for the service of other notices under this Act;
- (d) the place for hearing the appeal shall be in the county in which the land of the appellant is situated;
- (e) the judge shall hear and determine the appeal or appeals, and set aside, alter or affirm the award, correcting any error therein, and he may examine parties and witnesses on oath and, if he so pleases, inspect the premises, requiring the attendance with him of the engineer and may order payment of costs by the parties, or any of them, and fix the amount of such costs;
- (f) it shall be the duty of the judge to hear and determine the appeal within one month after receiving notice thereof as provided by this Section, but his neglect or omission so to do shall not render invalid the hearing or determining of the appeal after the lapse of that time, provided always that the judge may, if in his opinion it will be more convenient for the parties concerned, fix as the time and place for hearing the appeal a sitting of the court in the county in which the land of the person giving the notice of appeal is situated, notwithstanding the time so fixed may be more than one month after the receiving of the notice, and the appeal may be heard either before or after the regular sitting of the court;
- (g) the award as so altered or confirmed shall be certified by the clerk of the county court to the clerk of the municipality, together with the costs, if any, allowed, and by whom to be paid and the award shall be enforced as the award of the engineer, and the time for the completion of the work thereunder shall be computed from the date of such judgment in appeal. R.S., c. 132, s. 12.

Subpoenas

13 The clerk of the county court receiving the notice of appeal may issue under the seal of the court subpoenas to witnesses, which subpoenas shall be in the form, as nearly as may be, of those used in county

courts, and non-attendance or disobedience to a subpoena may be punished in the same manner as in an action in the county court. R.S., c. 132, s. 13.

Payment of contractor

14 The treasurer of the municipality shall pay the contractor for the work as soon as done to the satisfaction of, and upon the certificate of, the engineer, pending the subsequent collection thereof as aforesaid. R.S., c. 132, s. 14.

Fees as taxes

15 The municipality shall, at the expiration of the time for appeal or after appeal, as the case may be, pay to the engineer his fees, and also pay to the person declared to be entitled to the same any fees or costs awarded or adjudged to him and shall, unless the same are forthwith paid by the person awarded or adjudged to pay the same, place the amount on the collectors roll as a charge against the lands of the persons awarded or adjudged to pay the same, and the same shall thereupon become a charge upon such lands and shall be collected as ordinary municipal or town rates. R.S., c. 132, s. 15.

Letting of work

16 The engineer shall, at the expiration of the time limited by the award for the completion of the work, inspect the ditch or drain, if required in writing so to do by any of the persons interested, and if he finds the work or any portion thereof not completed in accordance with the award, he may let the same, in sections, as apportioned in the award to the lowest bidder therefor, taking such security for the performance thereof within the time to be limited as he deems necessary, but no such letting shall take place till after four clear days notice in writing of the intended letting has been posted in at least three conspicuous places in the neighbourhood of the work, and notice thereof is sent by registered letter to such persons interested in the award as are non-resident in the municipality, but if the engineer is satisfied of the bona fides of the person doing the work and there is good reason for the non-completion thereof he may, in his discretion, extend such time. R.S., c. 132, s. 16.

Certificate of engineer

17 The engineer shall, upon the receipt of notice in writing of the final completion of the work mentioned in Section 16, inspect the same within one week thereafter, and, if approved of and accepted by him, certify in writing the fact to the clerk, giving a separate certificate for each portion or section of work let and completed (Form F or to the like effect), and stating the name in each certificate of the person who did the work as well as the amount he is entitled to receive therefor, and also such extra fees as the engineer is entitled to by reason of such letting and subsequent inspection and by whom the same are to be paid. R.S., c. 132, s. 17.

Penalty

18 Any engineer who wilfully neglects to make the inspection required by either of Sections 16 or 17 for thirty days after he has received the written notice mentioned therein, shall be liable to a penalty of not less than five dollars or more than ten dollars, and every such penalty shall be paid over to the treasurer of the municipality in which the offence was committed. R.S., c. 132, s. 18.

Certified amounts paid

19 The council shall, at the meeting next after the filing of the certificate or certificates given by the engineer on completion of the work, pay to the engineer his additional fees therein mentioned, and forthwith thereafter may pay to any person the amount which, according to the certificate, he is entitled to receive for any such work, and thereafter the council shall, unless the amount or amounts named in the certificate or certificates, including such additional fees, are forthwith paid by the respective persons declared in the certificate or certificates to be liable to pay the same, cause the amount or amounts and fees to be added to

the collectors roll, together with seven per cent added thereto, and the same shall thereupon become a charge against the lands of the person or persons so liable, and shall be collected in the same manner as other municipal or town rates, and when collected shall be paid over to any person entitled thereto. R.S., c. 132, s. 19.

Serving notices

20 (1) Notices under this Act shall be served personally, or by leaving the same at the place of abode of the owner or occupant with an adult person residing thereat, and in the case of non-residents, upon the agent of the owner, or by registered letter addressed to the owner at the post office nearest to his last known place of abode.

Non-resident

(2) A non-resident within the meaning of this Section includes a person who does not reside within the municipality in which the lands which he owns are situated, and in respect to which proceedings are taken or to be taken under this Act, and where the place of abode of a non-resident is not known, notices under this Act requiring to be served on such non-resident may be served in such manner as a judge of the county court directs. R.S., c. 132, s. 20.

Rights and privileges of municipality

21 Every municipality shall have and exercise all the rights and privileges conferred by this Act, and may be made parties to the agreement or award, and shall in all respects be in the same position as an individual owner. R.S., c. 132, s. 21.

Conversion of ditch or drain

22 (1) In any case where an open ditch or drain is constructed under this Act, any person through whose lands such ditch or drain is constructed may, with the consent of the engineer, convert so much of the ditch or drain as runs through the lands of such person into a covered drain.

Conditions for consent

(2) The engineer, before giving his consent, shall examine the portion of the ditch or drain which is proposed to be covered, and shall determine the size and capacity of the proposed covered portion of the drain or ditch, and the nature and quality of material to be used therein, but no such consent shall be given by the engineer if the covering of such portion of the ditch or drain would impede or delay the free flow of the water which the ditch or drain is intended to carry off. R.S., c. 132, s. 22.

Award

23 The engineer shall file with the clerk of the municipality, if such consent is given, an award setting forth the particulars in accordance with this Act, and the award shall be subject to appeal. R.S., c. 132, s. 23.

Application for inspection

24 The person making the application for the covering of the ditch or drain may notify the engineer to inspect the ditch or drain in the first place, and shall also notify the owners interested whose lands are situated above his own, of the time when the engineer will examine the drain and shall also notify the engineer when the work is completed, and it shall not be necessary for such person to take the proceedings provided in this Act, and such person shall be liable for the fees and expenses of the engineer, and if not paid by such person to the engineer, the fees and expenses shall be collected as provided for in this Act. R.S., c. 132, s. 24.

Maintenance of covered drain

25 Such person, and the subsequent owners, shall maintain and keep the covered portion of the drain of such sufficient size and capacity as not to impede or delay the free flow of water above the covered portion or brought thereto by such drain and any damages occasioned by the neglect or failure to so maintain and keep such portion of the size and capacity aforesaid shall be payable by the owner of the land upon which the insufficient or imperfect portion of the drain is situated. R.S., c. 132, s. 25.

Use for other purposes

26 If any person during or after the construction of the ditch or drain herein provided for, desires to avail himself of such ditch or drain for the purpose of draining other lands than those contemplated by the original proceedings, he may avail himself of the provisions of this Act as if he were or had been a party to such original proceedings, but no person shall make use of the ditch or drain constructed under this Act unless under agreement or award pursuant to its provisions as to the use of lands of others, as to the enlargement, if such is necessary, of the original ditch or drain so as to contain additional water therein and as to the time for the completion of such enlargement. R.S., c. 132, s. 26.

Effect on other municipality

27 Notwithstanding any of the lands through which the drain is required are situated in a municipality adjoining the one in which the original proceedings were commenced, the engineer shall have full power and authority to continue the ditch or drain in and through so much of the lands in the adjoining municipality as is found necessary and all proceedings authorized under this Act are to be had, taken and carried on in the municipality in which the same were commenced, but in such case the clerk of such municipality shall forward to the clerk of the adjoining municipality a certified copy of the award, as made, confirmed or altered, and shall also forward to him a certified copy of every certificate of the engineer which affects or relates to the lands in the adjoining municipality and to the owners thereof and the council of the adjoining municipality shall, unless the amounts are forthwith paid by the persons declared by the certificates liable to pay the same, have and take all proceedings for the collection of the sums so certified to be paid as though all the proceedings had been taken and carried on in such adjoining municipality. R.S., c. 132, s. 27.

Fees

28 The fees to which the engineer shall be entitled under this Act, shall be such as are fixed by by-law or resolution of the council, and in case no such fees are fixed by the council, the same shall be his legally authorized fees for similar work, or such less amount as is agreed upon, and the fees to witnesses and for the service of papers authorized by the county court clerk shall be the same as those allowed to witnesses and for similar services in the county court. R.S., c. 132, s. 28.

SCHEDULE

Form A

(Section 6)

Municipality of

Whereas, it is found necessary that a ditch or drain should be made (deepened or widened) on, in the polling district of, and it is necessary to continue the same through lands in the polling districts of (if more than one lot, describe them).

Therefore, we, owners of the lands hereinafter described, do agree each with the other, as follows:

That I, owner of (describe lands) agree that I will make (deepen or widen) and maintain that part of such ditch or drain commencing at stake number one planted (describing locality of said stake) and thence to stake number two, and that such portion of the ditch or drain shall be (describing the depth and width) and I, owner of (giving the name of each person, the land owned by him, the

portion of work assigned, its depth, width, etc.) and each of us agrees to have our respective portions completed on or before the day of, 19.....

Dated

Witness (signed by the parties)

Form B

(Section 6)

To Municipality of

Sir, as the owner of land in the polling district of, I require to construct a ditch or drain through said land, and find it necessary to continue the same through your land in the said district, under the Ditches and Water Courses Act, and request that you will attend at on the day of 19..... at the hour of o'clock in the noon, with the object of agreeing, if possible, upon the respective portions of such ditch or drain to be made, deepened or widened, by the several persons interested.

Dated this day of, 19.....

Yours, etc.

Form C

(Sections 6, 7)

To

Clerk of the Municipality of

Sir, as the owner of land in the polling district of, I require to construct a ditch or drain through the said land, and it will be necessary to continue the ditch or drain through lands in the polling district of owned by, (describe each lot through which the ditch or drain must be continued, and the name of the owner of each parcel), and having failed to agree upon the respective portions to be made by each, I (or we) require the engineer appointed by the municipality for the purpose to attend at the locality of the proposed ditch or drain on the day of, 19....., at the hour of o'clock in the noon, to examine the premises, hear the parties and their witnesses, and make his award under the provisions of the Ditches and Water Courses Act.

Dated

(signed by party or parties)

Form D

(Section 7)

To

Take notice that the engineer appointed by the municipality for the purpose will attend at in the of on the day of, 19....., at the hour of o'clock in the noon, to examine the site of the proposed ditch or drain and make his award therein; and you as the owner of (describe the land) which may be affected thereby, are requested to attend (with any witnesses you may desire to have heard) at said time and place.

Dated

Yours, etc.

Form E

(Section 9)

I, the engineer appointed by the Municipality of, under the provisions of the Ditches and Water Courses Act, having by the requisition of, owner (or owners) of lands in the Municipality, representing that he (or they) required a ditch or drain on said land, and that it would be necessary to continue the ditch or drain through the following lands owned by, etc., did attend at the time and place named in such notice, and having examined the locality of such ditch or drain, and heard the parties and their witnesses (if any) find and award as follows:

That the land of, in, would be benefited by, and requires a ditch or drain (or the deepening or widening of a ditch or drain, if already made), to enable the proper cultivation or use of the said land, and I find that said ditch or drain will require to be extended across the land of in the of, and across the land of in the of (and so on, giving the name of each owner and lot to termination of said ditch or drain), and I award the making of the said ditch or drain (or the deepening or widening as the case may be) as follows: shall commence at stake number one, planted, (describe with reasonable certainty where planted) and shall open up and maintain a ditch or drain (describe width and depth), to stake planted (describe where planted, distance and direction from first stake) and such portion shall be made and completed within (name time within which to be completed). That shall commence at stake number two above described, and shall open up and maintain a ditch or drain (describe width and depth) to stake number three planted (describe where planted, distance and direction from stake number two) and such portion shall be made and completed within (name time, etc.). That shall, etc. (and so on to the termination of the said ditch or drain).

That my costs attendant upon the examination, and making of this award are and shall be borne and paid as follows, (give the name of the persons to be charged therewith, and the portion to be borne by each).

Dated this day of, 19.

Witness (signature of engineer)

Form F

(Section 17)

To

Clerk of the

I hereby certify that has completed certain work which under my award, dated the day of, 19., one was ordered and adjudged to perform, and which the said having failed to do, was by me subsequently let to the said for the sum of, and the said is entitled to be paid the said amount.

I further certify that my additional fees are, and that such amount and fees are, and that such amount and fees are chargeable on (describe property to be charged therewith) and shall unless forthwith paid be added to the collectors roll (with interest) as provided in Section 18 of the Ditches and Water Courses Act.

Dated this day of 19.

Engineer for

R.S., c. 132, Sch.