



CHAPTER 30

Drainage Act

[Assented to, the 13th of March, 1941]

HIS MAJESTY, with the advice and consent of the Legislative Council and of the Legislative Assembly of Quebec, enacts as follows:

DIVISION I

INTERPRETATION

- 1.** For the purposes of this act, unless the context is contrary thereto: Interpretation:
- a.* "Bureau" designates the Drainage Bureau established by this act; es-"Bureau";
- b.* "Construction" includes improvement and re-toration; "Con-struction";
- c.* "Drainage" means any surface or underground conduits used chiefly for the draining of lands and includes natural water-courses utilized for that purpose; "Drainage";
- d.* "Municipality" means any territory under the jurisdiction of a body charged with the administration thereof for municipal purposes; "Municipality";
- e.* "Ordinance" means an ordinance of the Bureau; "Ordinance";
- f.* "Owner" means any one having the ownership or usufruct of real estate, or possessing or occupying the same, as owner or usufructuary, or occupying Crown lands under an occupation license or a location ticket; it applies to all co-proprietors and to every partnership, association, railway company or corporation whatsoever; "Owner";
- g.* "Board" designates the Public Service Board; "Board";
- h.* "Secretary-Treasurer" includes, when there is occasion, the clerk or the treasurer of a city or town; "Secretary-Treasurer";

“Public service”;

i. “Public services” designates enterprises for transportation by railway or tramway or navigation; for the transmission of messages by telegraph or telephone; for the production, transmission, or distribution of electricity, gas, heat or motive power; and waterworks or sewage systems. The expression also includes all the services of the Government of this Province.

DIVISION II

THE BUREAU

Drainage Bureau established.

2. A body consisting of two members is established under the name: “Drainage Bureau”. It shall be the duty of such body to establish a system for regulating drainage works, in collaboration with the municipal councils, the interested persons and the various governmental departments.

Chairman, member *ad hoc*, in certain case.

3. One of the members of the Bureau shall be appointed chairman. Should a difference of opinion arise between the members of the Bureau, the Lieutenant-Governor in Council shall appoint a member *ad hoc*. Vacancies or total lack of members shall not have the effect of dissolving the Bureau.

Necessary staff.

4. The Lieutenant-Governor in Council shall appoint the members of the Bureau, a secretary and the necessary technicians, accountants, clerks and other employees and fix the remuneration of each. Division I of the Pension Act (Revised Statutes, 1925, chapter 11) shall apply to all such persons.

Offices.

5. The Bureau shall have its offices in the city of Quebec, and may, with the authorization of the Lieutenant-Governor in Council, establish offices at any other place. It may hold its sittings at any place it chooses.

Authenticity of registers, etc.

6. The registers and ordinances of the Bureau, as well as copies or extracts therefrom certified by a member of the Bureau or by its secretary, shall be authentic.

Rules of procedure and practice.

7. The Bureau may, with the approval of the Lieutenant-Governor in Council, enact any rules of procedure and practice which it may deem necessary or useful for expediting the business submitted to it and giving effect to its ordinances and other decisions.

8. The Bureau may make any investigation which it may deem useful for the drawing up or the observance of its ordinances and other decisions; and may summon, to appear before it or before one of its members or officials, any person who in its opinion is in a position to supply it with information, either orally or by producing documents. Bureau may make any investigation, etc.

For such purpose every member of the Bureau and every official authorized by it may administer the required oath to witnesses. Oath administered.

9. The monies required for the Bureau's administration and for the purposes of this act shall be paid out of the sums voted each year by the Legislature. Payment of monies required.

DIVISION III

PROJECTS

10. At the request of any interested person, or on its own initiative, the Bureau may make preparatory examinations and surveys for drainage construction in any part of the Province. Preparatory examinations and surveys.

11. For the purpose of such examination and survey and for the performance of their duties generally, the members of the Bureau, its officials and their assistants, shall have the right to pass anywhere over the land of private persons, to examine the existing drainage, to make measurements and to place any bench marks deemed of service. Right to pass over private lands, etc.

12. Whenever the Bureau considers it expedient that drainage construction be undertaken in a given basin, it shall prepare as complete a project as possible determining: Project.

1. the territory comprised in the drainage basin,
2. the plans and specifications of the work to be done,
3. the estimated cost of such work,
4. the apportioning of such cost,
5. the appraisal of the damage occasioned by such work to each property,
6. the requisite allowances for the work placed at the charge of certain owners,
7. the enhancement, resulting from the work, in the value of all the lands comprised in the drainage basin.

Project to include ancillary works.

13. The work to be done shall include all ancillary works (even outside the drainage basin) necessary to lead the water carried off to a sufficient outlet, and in particular the building or rebuilding of bridges, both upon roads already established and upon private property, and the removal of natural or artificial obstructions in any water-course serving as an outlet.

Dams.

No project shall provide for the removal of a dam developing a force of two hundred horsepower or more at the ordinary flow during six months, without the consent of the owner.

Indemnities and allowances.

14. The estimate of the cost shall include the contemplated indemnities and allowances.

Apportionment of cost: list of owners, etc.

15. The apportionment of the cost shall list the names of all the owners whose lands are affected by the project, showing in respect of each:

1. the official number of the lot,
2. the area comprised in the basin,
3. the contribution he is required to make,
4. the indemnity granted,
5. any contemplated allowance,
6. the net amount to be collected or paid out.

Properties grouped by municipalities.

The properties shall be grouped by municipalities and the total amount of contributions shall be indicated for each one. The person whose name appears in the municipal valuation roll shall be entered as owner.

Work specially described.

16. The project shall describe specially the work placed at the charge of each public service or other owner.

DIVISION IV

APPORTIONMENT, INDEMNITIES, ALLOWANCES

Basis of apportionment.

17. As a general rule, the apportioning of the cost of the work shall be made against each property in proportion to the area included in the drainage basin.

Exceptions.

18. The basin may, however, be subdivided according to circumstances; and the proportion payable in any given territory shall be increased proportionately when such territory derives greater benefit from the work.

Contribution for roads.

19. The contribution relating to an area occupied by a road or a highway shall be at the charge of the

persons who are obliged to maintain such road or highway.

20. When the same canalization serves as an outlet for several drainage basins, the cost of construction of the common outlet shall be charged to each drainage basin in proportion to the volume of water flowing from it and taking into consideration the rapidity of the flow issuing from each. Cost of common outlet.

21. The indemnity provided for each owner shall represent all temporary or permanent damage which the projected work may occasion and the expenditure to which it may put him, except for the work specially placed at his charge and for which an allowance is made. Indemnity for damages.

22. If it appears that the cost of the work needed to extend a drainage system to a point where it would empty without occasioning damage would exceed the amount of damage resulting from the free flow of the water over low-lying land, the project may provide, instead of such work, an indemnity in favour of the owner of such land. Indemnity for flooding low-lying land.

23. In the appraisal of the indemnity contemplated for a dam, the capitalized value of the damage which such work is liable to occasion to other properties must be deducted. Indemnity for dam.

24. The project may provide for an indemnity instead of for the establishing of a bridge on certain lands. Indemnity instead of bridge.

25. A special allowance may be granted to an owner, when work done by him is incorporated to advantage in the projected system of drainage. Allowance for work already done.

26. If it appears desirable that certain work to be done on a particular piece of land be done by the owner, the project shall provide an allowance for such work specially placed at his charge. This shall always be done when public services are concerned. Work done by owner of land. Public services.

DIVISION V

PUBLISHING OF PROJECT

27. A copy of the project shall be sent to the secretary-treasurer of every local municipality in which the properties concerned are situated. Copy to sec.-treas. of municipality.

Publication of notice of deposit of project.

Copy of notice to interested persons.

Omission not to invalidate.

Delay.

Oppositions received by Bureau.

Accepted by sec.-treas. of municipality.

Opposition in writing.

Transmitted to Bureau.

Hearing.

Notice.

Hearing before delegate.

Place of sittings.

28. The Bureau shall cause to be published, in the *Quebec Official Gazette*, in a French newspaper and in an English newspaper published in the territory contemplated by the project, or in the nearest locality, a notice of the deposit of the project, specifying the delay for receiving oppositions; and shall send a copy of such notice by mail to every interested person to his last known address. The inadvertent omission to transmit such notice shall not invalidate the proceedings.

29. A delay of at least fifteen days must elapse between the mailing of the last notice and the date fixed for the filing of oppositions.

DIVISION VI

OPPOSITIONS

30. Within the stated delay, the Bureau shall receive the oppositions made by interested persons against the project or against the contributions, indemnities and allowances.

31. The secretary-treasurer of every local municipality shall be bound to accept, within the same delay, every opposition made by the owner of land situated in the municipality.

32. Every opposition must be filed in writing.

33. Each secretary-treasurer shall transmit forthwith to the Bureau, by registered letter, all the oppositions received by him.

34. When oppositions have been received, the Bureau shall fix the day and place where they will be heard and shall give notice thereof at least eight days prior thereto by letter to each opposant and to the secretary-treasurers. The latter, on receiving the same, must post up such notice, as a public notice.

35. The Bureau may delegate one of its members or officials to hear the oppositions. The sittings must be held in the territory contemplated by the project or within a radius of five miles thereof. More than one date and more than one place may be fixed. Every municipality shall be bound to place its council room at the disposal of the Bureau for such purpose.

36. In every instance the Bureau shall decide whether or not there is occasion to reject or amend the project, and shall forthwith transmit a copy of its decision to each opposant and to the secretary-treasurers by registered letter. Decision by Bureau.

DIVISION VII

ORDINANCES

37. When the project is fully established, the Bureau may, by an ordinance, render it compulsory for all the interested persons and order the performance of the work. How project made compulsory: Ordinance.

38. Any ordinance may be amended by a new ordinance, but no substantial change in the project may be thus made without giving the notices prescribed for a new project. Amendment.

39. A copy of every ordinance shall be sent forthwith to the secretary-treasurer of each municipality concerned and he shall give public notice thereof. A copy shall likewise be transmitted to the registrar of every registration division in which there are lands affected, and such copy shall remain deposited in his office. Copies sent and notice given.

40. Every ordinance shall have the same effect as a by-law enacted by the competent municipal authority and shall supersede the deeds of agreement, *procès-verbaux* and by-laws respecting drainage, for the territory to which it applies. Effect of ordinance.

DIVISION VIII

PERFORMANCE OF WORK

41. In principle, work which has not been placed at the charge of public services or of interested persons must be performed at the diligence of the competent municipal authority. The Bureau, however, may, in every instance, order the work to be done by the municipalities indicated by it for the portion entrusted to each. Responsibility for work.

42. A municipal authority, charged with the execution of drainage work by an ordinance of the Bureau, Performance ordered by resolution.

Contract subject to Bureau's approval. must, by mere resolution, order the execution thereof by contract or by day labour. Any contract so awarded is subject to the Bureau's approval.

Contract given out by Bureau. **43.** The Bureau may, if the municipalities fail to act or whenever it deems it preferable, after calling for public tenders, give out on contract a part or all of the work prescribed by an ordinance. In such case, the Bureau shall contract in the name of each municipality in respect of the share of such municipality.

Delay to perform work. **44.** Every owner and every public service shall be bound to execute, within the delay fixed, the work allotted to it by an ordinance and to allow the other work to be executed by those to whom it is entrusted. However, no person shall be obliged to do so when the net amount payable to him, according to the ordinance, exceeds one hundred dollars, unless a copy of a certificate from the Provincial Treasurer, attesting that the latter holds such amount available, has been transmitted to him.

Proviso.

Supervision by Bureau. **45.** All the work shall be under the supervision of the officers of the Bureau.

Powers of Bureau in case of delay. If the work is not properly executed with the required diligence, the Bureau may rescind any contract and order whatever it may deem necessary in the circumstances.

Idem. It may, in particular, order the work allotted to a defaulting owner or public service to be done by the municipal authorities or by contract.

Cost. In such case the cost shall be entered by the Bureau, as an additional contribution, against such owner or public service.

DIVISION IX

PAYMENT OF THE WORK

Payment by municipal bodies. **46.** The municipal body charged with executing the work in a stated territory, or in whose name the Bureau has contracted for the execution of such work, shall be obliged to defray the cost thereof, including the net amount of the indemnities and allowances, and, on the Bureau's demand, to pay such sum into the hands of the Provincial Treasurer. An action to compel such body thereto may be taken by the Attorney-General,

Right of action.

the whole with recourse against the local municipalities for anything which exceeds its share.

47. Every local municipality must, on the dates fixed by the Bureau, pay the total amount to be collected from the owners subjected to the ordinance in its territory, including therein its own contribution, if any. Total payment by the municipalities.

48. In order to effect such payment, any municipality may, by mere resolution, borrow, by means of bonds, with the sole approval of the Bureau and of the Quebec Municipal Commission. Loans and bond issues.

49. The contribution imposed upon each owner shall become a special tax payable to the local municipality and shall be collected from each as such. If a loan has been made, the interest and amortization shall be apportioned yearly in the same proportion and in the same manner. Contribution a special tax.

50. If there be a difference between the actual cost of the work and the estimated cost, the contributions shall be increased or reduced proportionately. Difference between actual and estimated cost.

DIVISION X

MAINTENANCE

51. Failing any other provision in the ordinance, the municipal body charged with executing the work shall also be charged with maintaining it, and the Bureau may regulate the maintenance work by ordinance. Responsibility for maintenance. Regulation.

52. Sections 46, 47 and 49 shall likewise be applicable to the maintenance work, the cost whereof shall be apportioned *pleno jure* in proportion to the contributions fixed for the construction. Provisions applicable.

DIVISION XI

PROTECTION OF DRAINAGE

53. It is forbidden to obstruct, in any way, a drainage established under an ordinance of the Bureau. Every owner of property bordering on a water-course which forms part of such drainage must keep the approaches free of injurious vegetation, accumulations of branches or other waste matter for a distance of fifteen feet from the bank of the water-course. Obstructions forbidden. Duty of bordering proprietor.

Plans of roads and bridges submitted to Bureau.

54. No road or bridge shall be constructed by the Government of this Province or by any municipality unless the plans and specifications have been submitted to the Bureau with respect to everything relating to drainage.

Approval for dams.

55. No approval as contemplated under section 5 of the Water-Course Act (Revised Statutes, 1925, chapter 46) may be granted unless the plans and specifications have been communicated to the Bureau.

DIVISION XII

ARBITRATION BY THE BOARD

Board constituted arbitrator.

56. The Public Service Board is constituted arbitrator of disputes in matters of drainage, and any interested person may, within sixty days, submit to it for arbitration any decision or ordinance of the Bureau.

Procedure.

A petition setting forth the complaint and conclusions shall be addressed to the Board, which shall give notice thereof to the Bureau. The Board may order the petitioner to give such notices as it may deem necessary, according to circumstances.

Execution not suspended.

Unless the Board orders otherwise, the arbitration shall not suspend the execution of the Bureau's decision or ordinance.

Inquiry before Board.

57. The inquiry before the Board shall be made according to its statutes and rules of practice, after notice to the parties. When the case is appealable, the depositions shall be taken by stenography, if any party so require; otherwise there shall be no appeal.

Decision.

58. The decision of the Board shall be by an ordinance, stating the reasons therefor, and containing an adjudication as to the costs.

Homologation.

The Superior Court or a judge thereof must, upon a mere petition, homologate such decision, and it shall thereupon become executory as a judgment of such court.

Appeal.

An appeal shall lie to the Court of King's Bench if the amount in dispute exceeds five hundred dollars.

Contestation referred to Board.

59. Any contestation before the civil courts respecting any by-law, *procès-verbal*, deed of agreement

or ordinance in drainage matters must, on the motion of any party, be referred to the Board as arbitrator. The Board may charge the Bureau with the making of any inquiry by experts that may be deemed necessary. Inquiry by experts.

The homologation of the Board's decision shall be pronounced by the court seized of the contestation. Homologation.

As to the rest, the proceedings shall be had in accordance with the preceding sections. Procedure.

DIVISION XIII

PENALTIES

60. Anyone who hinders the officers of the Bureau or their assistants in the performance of their duties, may, on summary proceeding, be punished by a fine not exceeding twenty-five dollars, in addition to the costs, or by imprisonment for a period not exceeding two months in default of payment. The same penalty may be imposed in the same manner upon any person who displaces or removes a bench mark or other mark placed by the Bureau or its employees, or who violates any provision of this act, the whole in addition to any other recourse which may apply. Hindering officers of Bureau.
Removing bench mark, etc.

DIVISION XIV

FINAL PROVISIONS

61. Notwithstanding any general law or special act, no one shall be exempt from the application of this act, not even the services of the Government of this Province. Government not exempt from application of act.

62. The Minister of Agriculture shall have charge of the carrying out of this act. Carrying out of act.

63. This act shall come into force on the day of its sanction. Coming into force.

