I am very pleased to be here at the 46th Annual Land Drainage Engineers Conference and particularly pleased to be representing the Agriculture, Food and Rural Affairs Appeal Tribunal. I am a retired Consulting Engineer from Chatham who attended this conference as a practitioner from 1972 to 2008. I fully retired from active practice in 2011 and was appointed to the Tribunal in October, 2013. I am presenting today on behalf of Kirk Walstedt, who serves as Chair of the Tribunal.

I will not spend any time describing all of the duties of the Tribunal. I will assume that all practitioners know that we are a provincially appointed appeal body which has authority to hear appeals under approximately 17 provincial statutes and their regulations. I will focus only on appeals to the Tribunal under the Drainage Act.

There have been some personnel changes at the Tribunal.

Kirk Walstedt remains the Chair.

Typically, two qualified engineers sit as Vice-Chairs on the Tribunal. In 2013, those positions were held by Jack Young of Gravenhurst and Enio Sullo of Chatham. Early in 2014, Jack retired after 15 years of service and Enio retired after 5 years of service.

I received an appointment in October, 2013. Andy McBride, another well known retired engineer from Wingham, was appointed in November 2013.

Three new lawyers were also appointed as Vice-Chairs; Stan Benda from Toronto, Jeffrey Hewitt from Windsor and Glenn Walker from Ridgetown.

In order to get some sense of the level of activity of the Tribunal, let’s start by looking at a summary of drainage hearings held & decisions issued last year. 9 drainage hearings in total were held in 2013. Of those 9 hearings:

- 3 hearings related to appeals under Section 54(1) only
- 2 hearings related to appeals under Section 48(1) only
- 4 hearings related to appeals under Section 48(1) and 54(1)

The Tribunal has been somewhat busier this year. From Jan. 1, 2014 to this date, 6 hearings have been held and the decisions have been issued. 8 hearings have yet to be heard or have been heard but have not had the decision published. If all are completed in 2014, the total will then be 14. However, it is anticipated that some may extend into 2015.

Of these 14 hearings:

- 1 hearing related to an appeal under Section 48(1)
- 1 hearing related to an appeal under Section 48(1)(d)
- 1 hearing related to an appeal under Section 47 & 48
• 6 hearings related to appeals under Section 54(1)
• 4 hearings related to appeals under Section 48(1) & 54(1)
• 1 hearing related to an appeal under Section 64

It is interesting here to note the broad range of appeals received.

It is also interesting to note that in the 6 hearings held to date this year, the appellants in 2 of the hearings had legal representation as did the Municipality. Expert evidence was brought at one hearing.

The total number of appeals received so far in 2014 would be considered a reasonable average over the past number of years. There is no discernible trend either up or down.

We would like to remind all practitioners of the following practical suggestions to consider when appearing before the Tribunal. I believe that most are common practice but it is useful to keep them in mind. We are reminding you as we have not seen some of these practices applied at some recent hearings.

• Come prepared and have your materials organized with the appropriate number of copies if additional submissions are to be made. Don’t rely on Municipal staff to scramble for copies during the hearing.
• You should always have a large Plan mounted for a Tribunal Hearing. It is also very helpful if a large scale plan can be provided for each panel member, preferably in advance of a hearing.
• It is a very good practice to include interior watershed boundaries on all drain plans. This is particularly necessary when we are dealing with assessment appeals and we must try to follow the logic and process used by the engineer.
• It is also very helpful to show property ownerships along the top of the drain profiles.
• The engineer should consider including his “assessment reasoning” in his report. This may help to avoid an assessment appeal at the consideration stage and would also be necessary at the Court of Revision. Should you come before the Tribunal on a Section 54 appeal, and this information is not in the report, we strongly advise you to file a detailed assessment rationale as part of your initial filings.

There are always lessons to be learned from previous decisions. I will briefly identify 3 lessons that can be gained from 3 recent decisions. I would encourage you to read the decisions in detail.

1. Give careful consideration to the use and description of lands to be used for the construction or maintenance of a drain and for which allowances are provided, particularly in urban areas. In the Millbrook Drain, Town of Kingsville appeal, the
Engineer properly provided an allowance under Section 29 for the land taken on which to construct a new drainage works. He also offered a lesser allowance under Section 30 for a temporary working corridor adjacent to the new drain. However, in the report and in evidence at the hearing, the Engineer confirmed that extensive, permanent, restrictions of use were to be placed on the working corridor. These restrictions would impact the future use and development potential of the land. The restrictions were such that the Tribunal concluded that the working corridor should then be considered an integral part of the drain. Consequently, the compensation for this land should be provided under Section 29 at a rate equal to that of the land taken for the drain proper.

2. Practitioners, Municipalities and Appellants should be reminded that the Tribunal has the authority to award costs under Section 98(10) & (11). The Tribunal carefully considers arguments for the award of costs. The decision with respect to the Rosene Spillway/Deer Lake Project in the Municipality of West Nippissing may be referenced as an example of circumstances where costs were requested by and awarded to the Municipality. In that case, an appeal was brought by the Ministry of Natural Resources against the distribution of cost against the MNR under Section 40. This type of appeal is very rare. The appeal was denied. The Municipality successfully argued for costs. MNR was ordered to pay costs in excess of $30,000 to the Municipality.

3. Both the Municipality and the Engineer have an obligation under the Act to comply with the provisions of the Act. The decision on Pike Creek in the Town of Lakeshore speaks to that. The decision notes a failure on the part of the Municipality to properly notify the local Conservation Authority as required under Section 78(2). Despite the fact that the local Conservation Authority was aware of, and involved in the project, the provisions of the act were not followed. The decision also notes a failure on the part of the engineer to properly document meetings; to properly assess every parcel of land; to provide accurate drawings; and to provide accurate specifications for the works recommended. As a result, the decision of the Tribunal was to set aside the report. Errors occur in the plans and specifications of reports from time to time. As soon as they are discovered, we would certainly encourage Municipalities to have these errors corrected under Section 58(4) as soon as possible so as not to jeopardize the entire report.

In my opinion, successful engineers who write reports under the Drainage Act must have sound engineering training; have a strong understanding of the legislation; be thoughtful writers; have effective communication skills; and a clear sense of fairness. I applaud those that practice in this field. However, even a perfectly designed drainage works and a perfectly written report under the Act can be appealed. The appeal process is the right of the parties affected by the report.
whether their issue of appeal is real or perceived. Should an appeal come before the Tribunal, it becomes our duty to provide a fair and impartial hearing and decision process. I can assure you that all of the staff and panel members of the Appeals Tribunal take their responsibilities very seriously and strive to perform this duty at the highest level possible.

Thank you for your attention.

Ed Dries