STATUS OF BRIDGES

(Relative to the 1975 Drainage Act)

CREDITS

This paper was prepared with the assistance of Sid Vander Veen, P.Eng., Drainage Coordinator, and in part on information included in a Drainage Tribunal document prepared by Bernard Goodal, Tribunal Chair, and Herb Todgham, P.Eng., Vice-Chair, dated December 5th, 1995.

BACKGROUND AND DEFINITIONS

Historically, until the 1975 Drainage Act, the drainage legislation has distinguished between "access" drain crossings and "farm" drain crossings. An "access" crossing connects lands on one side of a drain to a Municipal (Public) road or access on the other side. A "farm" crossing is a means of crossing a drain from one side to the other all within private lands. Although the older legislation allowed for construction of both types of crossings within an Engineer's report, only the "access" crossing was considered part of the drainage works and was to be maintained by the drainage works, whereas the "farm" crossings were specifically excluded from being maintained by the drainage works or the Municipality. Since the 1975 Drainage Act, all bridge crossings included in an Engineer's report are to be deemed part of the drainage works, and are to be repaired and maintained as such.

In 1972 a Select Committee was formed to review the Drainage Act. This Committee presented a report of recommendations in 1974. One of the recommendations for changes to the Drainage Act is covered on page 42 of their final report and states: "The items covered in Subsections 4 and 5 are related and should be dealt with in one subsection under the revised statute so that the access bridges, farm bridges, and water gates thus dealt with should be built and maintained by the drainage area." As outlined below, this change was implemented and was therefore a specific change anticipated by the Select Committee that studied the pre-1975 Drainage Act.

It has now been almost 30 years since the 1975 Drainage Act redefined the way of dealing with bridges on a Municipal Drain. Many of the pre-1975 bridges are now reaching their life expectancy and require repair and improvement. The legal status of these pre-1975 crossings on a Municipal drain has often been a grey area. Questions often arise with respect to which bridges are a Municipal responsibility and which ones the Municipality has no authority to maintain, repair or replace.

In the following discussions, it is to be understood that the engineer's report referred to must have been adopted through a By-law in order to establish the bridge status under the
Drainage Act. Any bridge installed outside the auspices of an engineer’s report under the Drainage Act remains a private bridge and is dealt with under the applicable sections dealing with same in the Act.

A. ACCESS BRIDGES (private land to public roadway)

**Municipal Drainage Act – 1897**

The Municipal Drainage Act of 1897 dealt with bridges in Sections 9.(2) and 9.(3).

a. Section 9.(2) dealt with (access) bridges between highways and private lands. Where an engineer’s report provided “for the construction or enlargement of bridges required to afford access from the lands of owners to the traveled portion of any public highway” the Act states that “they (meaning the bridges) shall, for the purposes of construction and maintenance, be deemed part of the drainage work.”

b. In other words, any access bridge installed or improved under an engineer’s report pursuant to the 1897 Act, is to be maintained by the drainage works. Other sections of the Drainage Act establish that the cost of maintaining any bridge work is to be assessed to the lands within the watershed.

**Municipal Drainage Act – 1960**

The Municipal Drainage Act of 1960 dealt with bridges in Sections 8.(3) and 8.(4)

a. Section 8.(3) dealt with construction of access bridges. Where an engineer’s report provided “for the construction or enlargement of bridges required to afford access from the lands of owners to the traveled portion of any highway” the Act states that “they (again meaning the bridges) shall, for the purposes of construction and maintenance, be deemed part of the drainage work, and the maintenance thereof may include any enlargement from time to time rendered necessary by the drainage work.”

b. This is understood to mean that any access bridge constructed or improved under an engineer’s report pursuant to the 1960 Act is to be kept up and maintained in the future by the drainage works and is essentially the same requirement as established in the 1897 legislation.

**Drainage Act – 1975**

This edition of the Drainage Act removed the distinction between access bridges and farm bridges. Section 18 states that “the engineer in his report shall provide for the construction or the replacement, enlargement or other improvement of bridges, culverts ... and shall include the cost ... in his assessment for ... the drainage works”. This section
concludes by stating that "they (meaning access bridges and farm bridges) shall, for the purposes of maintenance or repair be deemed part of the drainage works." This is understood to mean that any bridge identified in an engineer's report prepared pursuant to the 1975 or subsequent versions of the Drainage Act are considered part of the drainage works and are to be maintained by abutting and upstream lands.

CONCLUSION

Therefore, prior to 1975, access bridges included for construction or improvement under an engineer's report, became part of the drainage works with the watershed lands responsible to maintain it. Any access bridges identified in an engineer's report subsequent to the 1975 Act are all considered part of the drainage works and are to be maintained by the abutting and upstream lands.

B. FARM ACCESS BRIDGE (on private lands)

Municipal Drainage Act – 1897

The Municipal Drainage Act of 1897 dealt with bridges in Sections 9.(2) and 9.(3).

a. Section 9.(3) dealt with farm bridges on the lands of any owner. Although the engineer could assess the cost of any work on the bridge as he determined, this section states "the land assessed for the drainage work shall not nor shall any municipal corporation be liable for keeping such bridges in repair."

b. This makes it clear that the owner was responsible for any future maintenance work required on the farm bridge and no other parties shared in the cost of same.

Municipal Drainage Act – 1960

The Municipal Drainage Act of 1960 dealt with bridges in Sections 8.(3) and 8.(4)

a. Section 8.(4) deals with farm access bridges. The engineer shall "provide for the construction or enlargement of bridges" and assess the cost as he deems reasonable. This section goes on to state "the land assessed for the drainage work is not nor is any municipal corporation liable for keeping such bridges ... in repair, but should the engineer ... deem it proper that any of such bridges ... be maintained by the drainage scheme he may so provide by his report."

b. In other words, farm access bridges are to be maintained by the owner unless the engineer specifically provides for the bridge to be maintained by the drainage works and is essentially unchanged from the 1897 legislation.
Drainage Act – 1975

This edition of the Drainage Act removed the distinction between access bridges and farm bridges. Section 18 states that “the engineer in his report shall provide for the construction or the replacement, enlargement or other improvement of bridges, culverts ... and shall include the cost ... in his assessment for ... the drainage works”. This section concludes by stating that “they (meaning access bridges and farm bridges) shall, for the purposes of maintenance or repair be deemed part of the drainage works.” This is understood to mean that any bridge identified in an engineer’s report prepared pursuant to the 1975 or subsequent versions of the Drainage Act are considered part of the drainage works and are to be maintained by the abutting and upstream lands.

CONCLUSION

Therefore, prior to the 1975 Drainage Act, farm bridges were considered to be private after construction or improvement under a report, with the owner responsible to maintain it, unless the engineer specifically provided in his report for the drainage works to maintain the bridge. Since the 1975 version of the Drainage Act, all bridges identified in an engineer’s report are considered part of the drainage works and are to be maintained by both the abutting and upstream lands, unless otherwise established by the engineer within the engineer’s report.

RECOMMENDATION

Based on all the above, it is recommended that Drainage Superintendents intending to carry out maintenance on a drain with farm bridges that require work, should take a close look at all the past reports for the drain. Before proceeding he should establish whether the farm crossings requiring work are actually part of the drain or not, and whether the Municipality has any authority to carry out work on same.