

AN ACT RESPECTING DRAINAGE.

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His Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

SHORT TITLE.

1. This Act may be cited as "The Alberta Drainage Act". ^{short title.}

INTERPRETATION.

2. In this Act unless the context otherwise requires— ^{Interpretation}
- (1) The expression "department" means the Department of Public Works for the Province of Alberta; ^{Department}
- (2) The expression "minister" means the Minister of Public Works for the Province of Alberta; ^{Minister}
- (3) The expression "engineer" means any engineer or land surveyor employed from time to time to perform any of the duties necessary for the carrying out of the provisions of this Act; ^{Engineer}
- (4) The expression "land" means and includes lands, tenements and hereditaments and any estate or interest therein. ^{Land}
- (5) The expression "road" means and includes any public trail, road or highway including any road allowance laid out under the provisions of the Dominion Lands Act. ^{Road}
- (6) The expression "reports" includes all maps, plans, estimates of cost of any work, and assessments undertaken under this Act. ^{Reports}
- (7) The expression "owner" includes any person, who by any right, title or estate whatsoever is or is entitled to be in possession of any land and the "Owner" executor or administrator of an owner, the guardian of an infant owner, any person entitled to sell or convey the land, an agent of an owner under a general power of attorney or under a power of attorney empowering him to deal with the land, and as regards roads, the Minister of Public Works.
- (8) The expression "judge" means a judge of the District Court of the District in which any ditch or proposed ditch under the provisions of this Act is or is proposed to be situated. ^{Judge}

- {9} The expression "clerk" means a clerk of the District Court of the District in which any ditch or proposed ditch under the provisions of this Act is or is proposed to be situated, ^{clerk}
- {10} The expression "sufficient out-let" shall mean sufficient discharge of water at a point where it out-let will do no injury to lands or roads;
- {11} The expression "ditch" means and includes a drain open or covered wholly or in part and whether in the channel of a natural stream, creek, or water-course or not, and also the work and material necessary for bridges, culverts, catchbasins and guards or any works necessary in connection therewith;
- {12} The expression "government ditch" means any ditch constructed under the authority of the Minister, whether any portion or all of the expense of the construction and maintenance thereof is borne by the Province of Alberta or not.

CONSTRUCTION OF GOVERNMENT DITCHES.

3. Whenever the Minister deems the construction of any ditch in the Province necessary he may have an examination and survey made by an engineer with the view of determining the feasibility and cost of construction of such ditch. Construction of Government Ditches.
4. The engineer employed to make the examination shall, as soon as possible, submit a report to the Minister on the proposed ditch, showing by reference to a map or plan or otherwise the location thereof; which report shall include an assessment showing the proportion of the cost of the proposed undertaking assessed against every public road and parcel of land to be benefited and shall be filed in the Department. Engineer to make a report.
5. The assessment of any parcel of land shall be based upon the increased value of such land by reason of the construction of the ditch and the assessment of any road shall be based upon the cost either of making such road as efficient for a highway as it will be made by the construction of the proposed ditch or of providing some alternative road and making it as efficient for a highway as the benefited road will be made by the construction of the proposed ditch. Assessment based on increased value.
6. In the event of the Minister determining after the receipt of the said report that the proposed ditch should be constructed, such construction may be proceeded with forthwith; and the Minister shall cause a notice to be inserted in two consecutive weekly issues in at least one newspaper, published or circulating in the vicinity of such proposed

Notice of construction of ditch to be published.

proposed ditch, of the determination to proceed with the construction thereof, and of the place or places where a copy of the engineer's report may be inspected, one of which shall be at some convenient place in the vicinity of such proposed ditch.

7. At any time within twenty days after the publication of the notice provided for in the next preceding section, any person affected by the assessment made by the engineer's report may file with the clerk of the court a notice of appeal from such assessment or any portion thereof, which notice shall specify the ground of appeal and shall be in duplicate. Appeal
from
assessment.
- (2) The notice of appeal shall contain the post office address of the appellant and shall be accompanied by the sum of ten dollars, the disposition of which shall be determined by the judge after hearing the appeal.
- (3) One duplicate of each notice of appeal shall be forwarded by the clerk to the Minister at Edmonton by registered mail as soon as the time for filing notices of appeal has expired.
8. The clerk shall thereupon submit the notices of appeal so filed with him to the judge, who shall fix a time and place for hearing the appeals of which notice has been so given. Judge to
fix a time
and place
for hearing.
9. At least ten days' notice of the time and place so fixed shall be given by the clerk by registered letter to the minister and to the appellant. Notice to
be given.
10. At the time and place so fixed the judge shall proceed to adjudicate upon the said appeals or any of them after hearing such evidence as may be adduced and for such purpose shall be a court of record and shall have all the powers vested in a court of record in civil cases. Hearing
appeals.
11. The judge may adjourn the proceedings from time to time and from place to place as he shall think fit. Adjournment.
12. As soon as may be the judge shall render his decision and shall confirm or alter the assessment in accordance therewith. Decision of
judge.
13. The decision of the judge upon such appeal or appeals shall be final.
14. The costs of appeals shall be paid and apportioned between the parties thereto in such manner as the judge may think fit, and in the event of the ten dollars deposited by any party ordered to pay costs not proving sufficient to pay the costs he is ordered to pay the deficiency shall be added to and form part of the amount of the assessment against the party ordered to pay such costs. Costs of
appeals.
How apportioned.

15. The only costs allowable under the next preceding section shall be witness fees according to the tariff that costs in force in the district courts and court fees according to the tariff in Schedule "A" to this Act.
16. The Minister may make such arrangements as he may think fit for the construction of any Government ditch either by contract or by day labor and for the payment therefor; and for the purpose of such construction and Construction all examinations and other works preliminary or subsequent thereto may by himself, his engineers, agents and servants together with teams, tools, machinery or appliances enter upon any and all lands in whomsoever they are vested.
17. The ditch may be made or built across or through the lands of any person on the located line of the ditch as shown by the engineer's report.
18. Every person who interrupt, hinders or obstructs any person while engaged under the authority of the Minister in making any examination for, or in constructing, maintaining, or repairing any government ditch or the works connected therewith shall be guilty of an offence and upon conviction thereof liable to a penalty not exceeding \$1000. Penalty for obstruction of work.
19. Every ditch or drain constructed under the provisions of this Act shall be continued to a sufficient out-let. Capacity of out-let.
20. As soon as conveniently may be after the completion of the construction of any Government ditch the Minister shall ascertain the total cost thereof which shall include the cost of purchasing or expropriating the right of way for the ditch through lands which receive no benefit therefrom and shall apportion such costs amongst the lands and roads benefited in the proportions fixed by the assessment mentioned in Section 4 hereof as finally confirmed. Apportion-ment of cost of constr-uction.
- (2) Any person through or near whose lands the ditch passes and who receives no benefit therefrom and who is deprived of his water supply for domestic purposes by reason of the construction of the ditch may apply for compensation therefor in the same way as he would be entitled to do if his lands were taken for any public work, and any amount paid to such person shall be included in the total costs of the ditch and assessed against the property benefited as hereinbefore provided.
21. Upon the completion of the construction of any ditch the Minister shall cause an examination thereof to be made by an engineer, who shall file in the Department a certificate

certificate showing the date of the completion of such ditch.

- (2) In the event of a portion only of a ditch being constructed, the Minister may cause an examination of such portion to be made by an engineer, who shall file in the Department a certificate showing the date of the completion of such portion.
22. The Minister shall thereupon give notice by registered letter to the owner of any parcel of land against which any portion of such cost of construction is apportioned whose address is known, of the amount of such cost apportioned against such land, and any cost apportioned which such owner may be liable to pay under the provisions of section 13 hereof shall be added thereto and shall be deemed to be a part of the sum apportioned against such land.
- (2) In the event of the address of any owner of land assessed under the provisions of this Act being unknown, the Minister may give notice of the proportion of the cost of construction assessed against such land by registered letter addressed to the owner at any post office in the vicinity of the land so assessed.
23. All sums apportioned against any lands under the preceding sections shall be a special lien against such lands in favor of His Majesty in the right of the Province, having priority over any claim, lien, privilege or encumbrance thereon except taxes.
- Amount payable to be a lien on the land.
- (2) In the event of any portion of the cost of construction of the ditch or other amount as herein provided being apportioned against any parcel of land for which patent has not been issued by the Crown the amount of such portion shall become a lien as in this section provided immediately upon such patent being issued.

RECOVERY OF AMOUNT OF ASSESSMENTS.

24. Any sum apportioned against any parcel of land or such portion thereof as may from time to time be payable as hereinbefore provided shall be recoverable as a debt due to His Majesty in the right of the Province by suit against the owner of such parcel of land in the name of the Attorney General and in any such suit a certificate purporting to be signed by the Minister of the amount so apportioned shall be prima facie evidence of the debt.
- A debt due to His Majesty.
25. Any sum apportioned against any parcel of land shall be payable to the Minister in ten equal annual instalments on the first day of December in each year.
- Payable in instalments.

year, beginning in the year in which the ditch or portion thereof which serves such parcel is completed according to the certificate of the engineer as mentioned in section 21 hereof, and unpaid instalments shall bear interest at the rate of five per centum per annum.

26. Any person liable to pay any sum of money as in section 21 hereof provided may commute the unpaid instalments by a cash payment of the total amount of such instalments less an amount equal to the account of all unpaid instalments respectively at the rate of five per centum per annum, or, with the consent of the Minister, may pay the same in a less number of annual instalments provided in the said section. Amount may be commuted.

Maintenance and Repairs.

27. The Minister shall make provision for all work necessary for the maintenance of and repairs to any Government ditch and the cost thereof shall be apportioned in the same manner as the cost of the construction of such ditch and shall be due and payable on the first day of December of the year in which the work is done. Maintenance of ditch.
28. In case the owner of any parcel of land neglects to pay any sum which he is liable for the benefit of such sum becomes due the Minister may cause the same to be levied with costs by distress of the goods and chattels of or in the possession of such owner or of any goods and chattels found on the said parcel of land in the possession of any occupant thereof. Distress for current expense.
29. In the event of any sum payable by the owner of any parcel of land remaining unpaid for two years, the Minister may cause notice to be sent by registered letter to all persons shown by the records of the proper Land Titles Office to have any interest in the said parcel of land to the address shown by such records, if any, that after the expiration of three months from the mailing of such notice application will be made to a judge of the Supreme Court for an order vesting the title of the said parcel of land in His Majesty. Forfeiture for non-payment.
- (2) At any time after the expiration of the said three months if the sum or sums due have not in the meantime been paid the attorney general may apply to the judge on not less than ten days notice to the parties and in the manner mentioned in the next preceding subsection for a vesting order and the judge may thereupon direct that the said parcel of land be absolutely vested in His Majesty freed from all liens, mortgages and encumbrances of whatsoever kind.
- (3) Upon any application under the next preceding subsection

subsection any certificate purporting to be signed by the Minister shall be prima facie evidence of the facts stated therein.

- (4) In the event of the sum or sums due being paid before the judge has made the vesting order as provided in subsection (2) hereof the said owner shall pay to the Minister such costs as the judge may direct, otherwise the vesting order as hereinbefore provided may be made with reference to such land.

REMOVAL OF OBSTRUCTIONS.

30. When any Government ditch heretofore or hereafter constructed becomes obstructed by dams, bridges, fences, washouts and other obstructions caused by the owner of Removal of the lands where such obstruction occurs so that the free flow of water is impeded thereby the owner of such land shall, upon notice in writing given by the Minister, remove such obstructions, and if not so removed within the time specified in the notice the Minister shall forthwith cause the same to be removed.

- (2) Any person or persons who shall neglect or refuse to duly remove such obstructions as are mentioned in the next preceding subsection after having been given notice to do so by the Minister, shall be liable on summary conviction to a penalty not exceeding fifty dollars.

31. The cost of removing such obstructions shall be paid by such owner to the Minister forthwith and in default of payment thereof the same may be recovered by suit in Cost of the name of the attorney general against the person liable therefor.

32. This Act shall be taken to supersede The Drainage Ordinance of the North-West Territories, being Chapter Repeal. 6 of the Ordinances of 1903, (1st session).