



Rural Ontario
Municipal Association

Trains and Drains

Protecting our collective interests – together

Presentation summary – January 22, 2024

What is this about?

Proper land drainage is essential:

- to ensuring **public safety** and safeguarding property by preventing flooding;
- to maintaining land **productivity** for agricultural production and forestry activities.

In Ontario, the **Drainage Act** allows affected property **owners** and **municipalities** to ensure proper land drainage through a broad **cost-sharing** mechanism, with independent oversight by an **engineer**, and a right of **appeal** for anyone affected.

What are railways up to?

Railway beds often **contribute** to a host of drainage challenges or they must be **integrated** into comprehensive municipal drainage works.

After abiding by the Drainage Act for a century, the major railways have started **pushing back** by refusing to **pay** their share of costs, refusing **access** to their land; refusing to acknowledge **municipal jurisdiction** or the **applicability** of the Drainage Act to railways; and turning to the federal **Canadian Transportation Agency** to resolve drainage disputes instead of pursuing Drainage Act appeals.

The common message from the railways is that because they are federally-regulated, they enjoy constitutional immunity to municipal and provincial rules. This argument is not founded.

What is ROMA doing about this?

ROMA has been playing a proactive role:

- as a clearinghouse by gathering clear data on the issue,
- by applying political pressure at the provincial and federal levels to get the railways to play by the rules – as they have always done,
- by coordinating the development of a concerted, legal strategy in response to the railways' unfounded constitutional claims, and
- by approving a rare intervention by ROMA in the case opposing Chatham-Kent and CPR in which the railway is expected to make its constitutional claim for the first time.

Unless the railways **yield** to pressure, the only way to resolve the issue will be to obtain a **Court ruling** declaring that the Act applies to railways. In that light, ROMA has been coordinating a common legal strategy with **Chatham-Kent** opening up the legal front in our collective battle:

- Chatham-Kent is a relatively large ROMA member, with its own in-house legal team who are well-versed in Drainage Act issues and sufficient resources to take this on;
- it had Drainage Act files ready to proceed to Court adjudication that were deemed to be good candidates for the constitutional arguments that will have to be made.

Why does this issue matter to ROMA members?

1. The financial and operational implications are significant for smaller municipalities:
 - If these large multinational companies refuse to pay their fair share, taxpayers and property owners will be left with covering their bills.
 - The existence of railway lands can significantly increase costs of drainage projects, so the railways' position is patently unfair.
 - If municipal drainage networks cannot cross their lands, drainage simply cannot work. This undermines the long-term functionality of agricultural and other lands.
 - Clarifying railways' obligations to provide access and pay their costs for drainage works will provide certainty for all landowners and rural municipalities.
2. The bogus *immunity* position the railways are taking have ramifications on other core municipal responsibilities:
 - The major railways appear to have concerted themselves: they are essentially all taking the same position on the Drainage Act.
 - In Halton, CN has refused to abide by any municipal bylaw or provincial statute in the construction of a massive rail-to-truck transfer hub – fill bylaws, road access bylaws, etc. – and the Railway Association of Canada is openly supporting CN in Court.
 - FCM is now getting consistent reports from across the country that telecommunications carriers (Bell, Rogers, Telus, etc.) have starting taking the same position with respect to their work in municipal rights-of-way.
 - Carriers and FCM have been involved in a major legal battle in which the carriers are seeking the right to install antennas anywhere they want.

What does ROMA need from my municipality?

Information: Share any similar experiences you have with the ROMA. This information will help us plan and carry out our strategy.

Keep on top of things: Make sure to proceed diligently with any Drainage Act files, keep an eye out for your limitation periods, and don't buy into the railways' immunity claims.

Coordination: If you are at the stage of contemplating or preparing legal action for unpaid drainage costs or a refusal to provide access, let us know.

Awareness and support: Raise awareness with your Councils and seek support for this issue (pass motions, support funding support requests if received etc.)