

FILE NO.:008Hewitt24

DATE: 2025/05/09

IN THE MATTER OF THE *DRAINAGE ACT*, R.S.O. 1990, CHAPTER D.17, AS AMENDED.

AND IN THE MATTER OF an appeal to the Agriculture, Food and Rural Affairs Appeal Tribunal ("the Tribunal") by **Timothy J. Claudio** of Innisfil, Ontario, under Section 48(1) of the *Drainage Act* ("the Act") with respect to the **Hewitt's Creek Drain** in the Town of Innisfil.

AND IN THE MATTER OF a hearing to be held pursuant to Rule 18 of the Tribunal's Rules of Procedure.

BETWEEN:

Timothy J. Claudio

Applicant

Self-Represented

– and –

Town of Innisfil

Respondent

Self-Represented

– and –

County of Simcoe

Participant

Self-Represented

Heard: May 5th, 2025

Via Zoom Conference

Before: Tricia Schouten, Vice Chair, John Johnston, Vice-Chair, and David Stevens, Member

Parties Present:

Timothy J. Claudio, Appellant

Jeremy Nyenhuis, Drainage Superintendent – Town of Innisfil

Kevin Jacob, Deputy Clerk – Town of Innisfil
Jeffrey Dickson, P. Eng., Engineer that wrote the Report
Claire Walker, Project Engineer – Simcoe County
Julie Scruton, Manager Transportation Construction – Simcoe County

DECISION OF THE TRIBUNAL

Preliminary Matters

- [1] The Agriculture, Food and Rural Affairs Appeal Tribunal (“the Tribunal”) heard this matter virtually on the 5th day of May, 2025.
- [2] The Appeal concerns the Hewitt’s Creek Drain (“the Drain”) in the Town of Innisfil (“the Respondent”). The Engineer’s Report dated April 15, 2024 (“the Report”), for the Drain was prepared by R. J. Burnside & Associates Limited and was signed by Mr. Jeff Dickson, P. Eng. (“the Engineer”).
- [3] Kevin Jacob, Deputy Clerk with the Town of Innisfil, performed the duties of Clerk of the Tribunal.
- [4] An Affidavit of Service dated April 23, 2025, was filed as proof that all parties had been served with the Notice of Hearing.

Issues

- [5] The issues contained in the Notice of Appeal are as follows:
 - the benefits to be derived from the drainage works are not commensurate with the estimated cost thereof;
 - the drainage works should be modified on grounds to be stated; and,
 - the allowance to the Appellant provided by the Engineer is inadequate or excessive.

Overview

- [6] Commencing in 2012, the County of Simcoe (“the County”) proceeded with a municipal class environmental assessment project for Innisfil Beach Road (“the Road”). In 2022, it was discovered that work was being done on the Road which involved the Drain. As a result, at the request of the County, the Town appointed the Engineer pursuant to section 78 of the Act.
- [7] The Report was prepared to incorporate major improvements to an upstream portion of the Drain by the County. At the time of the on-site meeting by the Engineer, much of the work to the Drain had been completed. The portion of the culvert which ran beneath the Road had been removed such that the only work

left to be completed was to provide an outlet and diversion around the Appellant's property.

- [8] The projected cost of the work provided for in the Report is \$34,000.00, all of which has been assessed to the County.
- [9] The Report provides that a corrugated drainage pipe of approximately 70 meters in length ("the Pipe") which is located beneath the property owned by the Appellant be abandoned and cease to have Municipal Drain status. The Report provides for an assessment pursuant to section 30 of the Act in favour of the Appellant in connection with the removal of the Pipe in the event that he intends to do so. The said assessment is in the amount of \$4,000.00.

Motion to Adjourn

- [10] As a preliminary matter, the Appellant brought a motion to adjourn. The Respondent did not consent to the motion and therefore the Tribunal heard submissions from both parties.
- [11] The Appellant submitted as follows:
 - a) the local conservation authority is scheduled to attend at his property on May 8, 2025, to provide details on any permit(s) required to remove the Pipe and to provide associated costs;
 - b) the Appellant has not received all necessary documents from various governing bodies;
 - c) the Appellant is still waiting on estimates of the cost to remove the Pipe. He currently has one estimate, but is having issues obtaining additional estimates;
 - d) the County has failed to provide a copy of the permit(s) for the work which it completed at the property and documents regarding the property being identified as hazardous lands;
 - e) the Respondent and the County do not want to discuss the issues with him;
 - f) without the proper costs and permits to remove the Pipe, he is not currently in a position to submit all relevant evidence;
 - g) he will assume no liability for the Pipe; and,
 - h) there is an encroachment onto his property and he will be looking into the value of the land which is subject to the encroachment.

[12] The Respondent submitted as follows:

- a) the hearing should not be adjourned. There have already been several adjournments at previous stages of the appeal at the request of the Appellant;
- b) the Appellant has had sufficient opportunity to prepare for the hearing;
- c) further delay in the proceeding would result in additional costs with respect to the work provided for in the Report; and,
- d) further delay in proceeding with the work will prejudice the Respondent.

[13] The Tribunal considered the submissions of both parties and determined that the motion to appeal would be dismissed. The determination was made on the following basis:

- a) the Notice of Appeal was filed in June, 2024, and as such, the Appellant has had ample time to prepare for the hearing;
- b) the estimates referred to by the Appellant are for the removal of a 70 meter long culvert. He had almost a year to obtain estimates for a relatively minor culvert removal;
- c) at the Appellant's request, the Pre-Hearing Conference was adjourned from September 4, 2024, to December 2, 2024, and again to January 29, 2025;
- d) the Pre-Hearing Conference Order issued on January 29, 2025, included an Order with respect to the disclosure of documents. Any requests for disclosure were to be made to the Tribunal and the other party by March 4, 2025. If the Appellant was having issues obtaining documents from the Respondent or the County, the request should have been made to the Tribunal and the Respondent by March 4, 2025. No such requests were received by the Tribunal; and,
- e) further delay would prejudice the Respondent as costs for the work continue to increase.

[14] The Tribunal concluded that the Appellant had ample time to prepare for the hearing, did not comply with the Pre-Hearing Order with respect to requests for disclosure and that further delay would prejudice the Respondent. By unanimous decision, the request for an adjournment was denied.

Presentation of Evidence

- [15] The Appellant advised that he insisted on an adjournment and advised that he would not proceed.
- [16] The Tribunal advised the Appellant that he had an opportunity to make an opening statement. His opening statement was "This needs to be adjourned."
- [17] When asked to present his evidence, the Appellant again attempted to make submissions as to why he required an adjournment. He was again advised that the request for an adjournment had been denied and that this was his opportunity to present evidence supporting his appeal.
- [18] He was advised multiple times that he could give testimony supporting his appeal and incorporate documentary evidence into his testimony. The Appellant was asked multiple times as to whether he wished to present evidence in support of his appeal.
- [19] He advised that he would not testify until he had all of the documents that he required from all governing bodies. The Appellant refused to present any evidence.
- [20] The Tribunal asked the Respondent for submissions as to how it wished to proceed in light of the fact that the Appellant was not presenting any evidence. The Respondent requested a brief recess to discuss it.
- [21] When the hearing resumed after the recess, the Appellant was again questioned as to whether he wished to present any evidence in support of his appeal. He did not.
- [22] The Respondent advised that it wished to present its evidence.

Jeff Dickson

- [23] Mr. Dickson presented the Tribunal with a brief explanation of the history of the Drain and the Report. After the explanation, he testified as follows:
 - a) the Report provides only for engineering fees to write the report and allowances. Neither the Engineer nor the Respondent were involved with the design work, permits, supervision of the work or the tendering of the work in connection with the major improvements to the Drain. That was all completed by the County. The Report was for the sole purpose of relocating a portion of the existing drain to provide an outlet for the new road crossing, and abandoning the Pipe;

- b) the allowance to the Appellant was based on his calculation of the cost to remove the Pipe in the event that the Appellant chooses to remove it. Both ends of the Pipe are now plugged by the County such that there is no flow through it. As such, he is not aware of a permit being required to remove it, and he does not feel that the Pipe needs to be removed. Because the Appellant was not given an allowance when the Pipe was installed in 1987, he felt it reasonable to give him an allowance in the event that he does decide to remove it;
- c) the allowance was calculated as follows: one half day with an excavator to remove the Pipe calculated at \$1,000.00 (\$200.00/hour); seven loads of fill to fill the trench calculated at \$1,000.00; one half day with an excavator to spread and level the fill calculated at \$1,000.00 (\$200.00/hour); and, topsoil, seed and miscellaneous costs calculated at \$1,000.00;
- d) as it is now plugged, there should be no safety issues with respect to the removal of the Pipe; and,
- e) the assessment does not take into account the fact that if the Pipe is removed, there is a potential increase in the value of the Appellant's property as subsequent severance(s) or further development may be permitted which would not have been permitted had the Pipe not been removed.

[24] On cross-examination, Mr. Dickson testified as follows:

- a) he had not completed any research regarding the potential erosion of the Pipe as a result of it being plugged by the County on both ends. He testified that over time, there is a possibility of a potential decomposition of the Pipe;
- b) once the Pipe is abandoned it is no longer the responsibility of the Municipality;
- c) he has never referred to the Appellant's property or the Pipe as hazardous lands;
- d) he does not believe that he has ever received an email from Kevin Elsses, a Town of Innisfil councillor, regarding the trees on the Appellant's property;
- e) he had no involvement with the ditch along the easterly boundary of the Appellant's property as the County had completed that work. As a result, he had no knowledge of any permits obtained; and,

- f) with respect to this project, he is not aware of the minimum distance requirements relating to drainage ditches as it was not required for the Report.
- [25] The Respondent called no further witnesses.
- [26] The Appellant was then offered the opportunity to submit reply evidence. The Appellant indicated that he would be calling himself as a witness. Numerous attempts were made to swear in the Appellant through a solemn affirmation, however, the Appellant refused to certify that he had no documents in front of him other than those that had previously been provided to the Tribunal and that he intended to enter as exhibits. Rather, he repetitively stated that he did not have all of the documents in his possession required in order to proceed.
- [27] He again insisted that the hearing be adjourned so that he could obtain further evidence.
- [28] He was advised that he could not give evidence as a witness unless he could make the solemn affirmation. He advised that he would send evidence to the Tribunal once he had it.
- [29] He was again advised that there would be no further opportunity to provide the Tribunal with evidence and that, if he didn't provide it at this hearing, the Tribunal would have no evidence in support of his appeal.
- [30] In an effort to swear him in, he was asked numerous times to certify that he had no documents in front of him other than those that had previously been provided to the Tribunal and that he intended to enter as exhibits. The Appellant refused to answer the question.
- [31] The Tribunal determined that the Appellant refused to be sworn in and therefore, he could not provide evidence in reply as a witness.

Decision

- [32] The behaviour of the Appellant throughout the hearing was disruptive, aggressive, and disrespectful.
- [33] The Appellant was offered numerous opportunities to present evidence supporting his appeal but refused to do so. As a result, the only evidence before the Tribunal was the Report, the curriculum vitae of Mr. Dickson and the testimony of Mr. Dickson.

[34] The Tribunal finds as follows:

- 1) the benefits to be derived from the drainage works are commensurate with the estimated cost thereof;
- 2) the drainage works should not be modified; and,
- 3) the allowance to the Appellant provided for in the Report is reasonable.

Order

[35] Based on the findings and conclusions set out,

- 1) The appeal of Timothy J. Claudio pursuant to section 48(1) of the *Drainage Act* is dismissed.
- 2) There shall be no Order as to costs and all parties shall be responsible for their own costs.

So orders the Tribunal.



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Tricia Schouten
Vice-Chair

DATED at Richmond, Ontario this 9th day of May, 2025.

This document is also available in French. Please contact the Tribunal at 519-826-3433 or by email at AFRAAT@ontario.ca to request a copy in French.

Ce document est également disponible en français. Veuillez contacter le tribunal au 519 826- 3433 ou par courriel à AFRAAT@ontario.ca pour demander une copie en français.

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