

AVOIDING & RESOLVING DRAINAGE ISSUES

Photo: Williams Drainage

Under the [Agricultural Tile Drainage Installation Act](#) (ATDIA), Ontario farmers are assured that licensed drainage contractors are competent and using adequate equipment. Licenses are issued to businesses, drainage machines (plows, wheel and chain) and to their operators; farmers can find an up-to-date list of licensed drainage contractors on [OMAFRA's website](#).

While Ontario's contractors and their equipment may be some of the best in the world, there could still be concerns with a job. If landowners or farmers have complaints about workmanship, the best resolution is an agreement reached between the landowner and contractor. When that fails, there are a couple of different options to settle a dispute, with the last resort being court resolution, as both legal costs and the cost of damaged business reputations would be substantial.



**Land Improvement
Contractors of Ontario**
Factsheet
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For contractors

The first step to avoid an issue or complaint is to follow the design guidelines and best installation practices outlined in the [Drainage Guide for Ontario \(Publication 29\)](#), which includes:

- Designing the system to ensure that pipes are properly sized with the needed cover,
- Ensuring the drainage system has legal and sufficient outlet before beginning a project,
- Avoiding any provincially significant wetlands,
- Understanding soil types by digging test holes, especially in areas with potential of [iron ochre](#) or quicksand,
- Avoiding installing tile runs directly parallel to the direction that the field will be worked,
- Ensuring proper soil conditions during installation, avoiding compaction, smearing, etc,
- Ensuring a Class A licensed operator is doing installation or is adequately supervising other licensed operators,
- Installing laterals starting from the main, avoiding 'top-down' installation, and
- Using certified drainage pipe and stronger pipe as required.

As well, it is best to not 'oversell' a drainage system. Inform your clients that it could take a few years before the system performs optimally. After project completion, contractors could provide the farmer with the factsheet [Maintenance of a Subsurface Drainage System \(13-037\)](#).

Lastly, unexpected issues can increase the final cost beyond the initial quote to your client, so it is best to communicate in advance, perhaps in writing with a form or contract.

For farmers & landowners

Even with the best possible design and installation, there are several reasons why the performance of a tile drainage system may not meet your expectations. Newly installed drainage systems may take months or years to settle and work optimally, so patience is key. However, there may be other reasons down the road that would impact system performance:

- **Collapsed or cut tiles:** It is so tempting to use a tractor or heavy equipment to pack down the mounding that occurs above a newly installed tile run. Don't do it! It could damage or even crush the tile. Travel across or straddle new tile installations whenever possible. As well, utility companies have been known to cut tile during installation of buried utilities, causing drainage issues.
- **Soil compaction:** Compacted areas can drastically reduce the drainage potential of a field. Avoid doing field work on wet ground, especially with repeated travel in an area. If you do see a wet area, try [testing water infiltration rates](#) at various depths of the soil profile. Compaction can be remediated through cover crops and vertical tillage in dry conditions.
- **Blocked tiles:** Pipe can be blocked by various debris or roots. Manure can get into tile if applied at the wrong rate or time and can cause major issues to both the tile system and to water quality. Be especially careful around surface inlets to keep manure and other debris from entering the system. Keep trees at least 15 meters (50 feet) from tile and be sure to keep rodent guards intact at the outlets. See the factsheet [Farm Drainage Systems and Tree Roots \(21-063\)](#). Also note that iron ochre can be present in organic soils and is difficult to manage; when present, it can greatly reduce the longevity of a drainage system.

RESOLVING WORKMANSHIP DISPUTES

Resolve it yourselves



Often the cheapest and easiest resolution for a workmanship dispute is one done between the parties, with the support of a mediator if needed. This process requires both sides to make concessions for the other. For contractors, it is best that they attend any on-site meetings and take the complaint seriously, doing inspections of the field to determine the cause of the drainage concern. If there are issues stemming from the installation itself, a contractor may choose to repair the system at no charge, return payment, or other solutions as appropriate. It is important to note that correspondence should be documented in writing and include the property owner as well as the current occupant. Where a contractor feels that they have met all the requirements of Publication 29 and the Legislation, but has not been able to satisfy the landowner's concerns, the contractor or the landowner may wish to initiate an OMAFRA inspection.

Involve OMAFRA



Complaints can be made to OMAFRA by either the landowner or contractor. A complaint form is available by contacting the Ministry (1-877-424-1300/ ag.info.omafra@ontario.ca). There may be a subsequent inspection and report issued by OMAFRA's Drainage Inspector at no cost to the contractor or landowner. A contractor will be requested to coordinate and cooperate with the Inspector, attending meetings and providing excavation equipment for the inspection. If the contractor does not accommodate, they may be subject to a Director's hearing. Please note that this is a third-party inspection of the drainage system only to determine conformity to the Legislation and to Publication 29. The Report may contain recommendation for either the contractor or the landowner, but the ATDIA does not provide authority for the inspector to write an order, forcing that work be done. However, should a contractor choose not to follow the recommendations in the report, they may be subject to a hearing before the Director under the ATDIA. A contractor who has received notice of a hearing before the Director has the opportunity to explain to the Director why their licenses should not be revoked. The inspector's report can also be considered as evidence in a potential lawsuit.

File lawsuit



Due to the excessive cost of litigation, entering into a civil lawsuit for poor workmanship should be considered a last resort, and only after a reasonable opportunity for alternative resolution or repairs. For damages or jobs under \$35,000, the issue could go to Small Claims Court. The steps to larger legal action through the Superior Court of Justice are [outlined on their website](#). Contractors and/or landowners should strongly consider getting legal advice prior to filing a civil lawsuit.

Who is ultimately responsible for a drainage job?

Contractors are trained and licensed professionals. They are responsible for proper design and installation but *not* for the soil's response to the system. A farmer must properly manage the soil and its infiltration capacity.

If there is a job that looks beyond a contractor's capacity to do well, or if a landowner is insisting on a method that the contractor does not feel will work, they would likely do best to just walk away from the job. In one instance in Ontario, a contractor believed that filter sock was necessary for a job and when the farmer disagreed, the contractor had him sign a waiver agreement before he installed it without filter. When the system soon failed, the farmer took the contractor to court and won. The judge's reasoning was that the contractor is the expert and the waiver demonstrated that the contractor knew the system would fail.

What is LICO and its role in a complaint process?

The Land Improvement Contractors of Ontario (LICO) is an industry-led group supporting the integrity of the agricultural drainage industry in Ontario, representing suppliers, contractors, engineers and other practitioners. While LICO does its best to provide its members with networking and industry knowledge, it has no legal authority over its members, nor does it represent the interests of its members as individuals.

The Drainage Program Coordinator, along with OMAFRA's Drainage Inspector are the independent third-party experts; LICO strongly supports the OMAFRA Drainage Program and the enforcement of all legislation that protects the quality of drainage for farmers in the province.



Digital version (with weblinks) at drainage.org/factsheets