Evolution of Municipal Right-of-Way Oversight

National Deregulation and the Evolution of Municipal Right-of-Way Oversight

In 1993, Parliament enacted the current *Telecommunications Act*, opening Canada’s telecommunications market to competition. The resulting surge in infrastructure construction produced congestion in public rights-of-way, higher inspection and restoration costs, and operational risks for municipalities charged with protecting public assets.

Balancing the need for technological advancement with the duty to protect taxpayer interests quickly became a complex governance challenge for local governments.

Early Municipal Leadership and Cost-Neutrality Principles

Hamilton was among the first municipalities to adopt a structured, cooperative model for telecommunications access to its Right of Ways. Consistent with section 43 of the *Telecommunications Act* and early Canadian Radio-television and Telecommunications Commission direction, Hamilton advanced the principle that municipalities must be **made whole** for incremental costs created by telecommunications occupation of the Right of Way. This “cost-neutrality” principle remains the foundation of the City’s permitting and coordination framework.

Post-Amalgamation Harmonization and the Creation of Municipal Access Agreements

Following amalgamation in 2001, Hamilton consolidated the differing permitting systems of its predecessor municipalities and established standardized **Municipal Access Agreements.**

The process was led through the City’s **Standards and Approved Products Committee**, a cross-departmental working group responsible for evaluating design specifications, construction standards, and material approvals used across all City capital and utility works. The Committee developed and maintains the City’s **Standards**

and Approved Products List, which governs materials, installation methods, and design standards for all works within the public right-of-way. These published standards are available online through the City’s Planning and Development portal at: Hamilton Standards and Approved Products.

The Committee’s work ensured that utility and municipal projects follow consistent, evidence-based specifications, supporting transparency, safety, and long-term asset protection.

Together with the Municipal Access Agreement framework, these standards defined access procedures, cost-recovery mechanisms, insurance and indemnity provisions, and relocation responsibilities. They also established defined **utility corridors** within the ROW, ensuring orderly development, predictable costs, and operational safety. Any request for a non-standard corridor triggers inter-departmental review to confirm that future maintenance and capital activities will not be compromised.

Canadian Radio-television and Telecommunications Commission Decision 2016-51 – City of Hamilton vs. Bell Canada

By 2014, Hamilton and Bell had reached an impasse regarding the cost, coordination, and permitting of telecommunications installations. The City initiated a formal application before the **Canadian Radio-television and Telecommunications Commission** seeking to clarify roles, responsibilities, and cost-recovery principles under section 43 of the *Telecommunications Act*.

In *Telecom Decision CRTC 2016-51 – City of Hamilton vs. Bell Canada* (Canadian Radio-television and Telecommunications Commission Link), the Commission reaffirmed that:

- Municipalities are entitled to **full causal cost recovery** for incremental expenses arising from telecommunications work in the right of way;
- Municipal construction standards and inspection processes are enforceable; and
- Utilities must supply **as-constructed data** and coordinate projects with municipal capital and maintenance programs.

The decision resolved the long-standing concerns between Hamilton and Bell and re-established a cooperative relationship.

Council-Directed Bell Fibre Optic Program (2019–2026)

Building on the **Canadian Radio-television and Telecommunications Commission** Municipal Access Agreement foundation, Hamilton and Bell worked closely to implement elements of the Mayors Intelligent City program to develop a city-wide fibre overlay program, **which became one of the largest municipal broadband partnerships in Canada.**

In 2020, Council approved Report PW20003/LS20001 – Telecommunications Industry Investments in the City (Bell Fibre Optic), authorizing a comprehensive partnership with **Bell Canada** to deploy fibre-to-the-home across Hamilton.

Key program features included:

- **All municipal costs recovered** from Bell, including four dedicated full-time equivalent staff for permitting and inspection;
- A five-year, **$400–$500 million private investment**, servicing more than 200,000 premises;
- Use of City-approved corridors, construction standards, and permitting timelines;
- Deployment coordinated through Hamilton’s **SPIDER** and **Corridor Management** systems; and
- An advanced digital permit and inspection process that reduced approvals from 30 to 10 business days, enabling approximately **18 times greater output** (180 kilometres per year vs. 10 kilometres per year).

Council reaffirmed this framework through *Report PW20003(a) – Telecommunications 2024*, extending the agreement to 2026 and directing that the Bell model serve as the **template for future telecommunications programs**.

This program is now recognized nationally as a **benchmark for large-scale, cost-neutral broadband delivery**, demonstrating that accelerated deployment can proceed efficiently when utilities fund municipal oversight and comply with established standards.

Canada Post Super-Mailbox Precedent (2015 ONSC 3615)

In parallel with its telecommunications initiatives, Hamilton was a lead municipality in *City of Hamilton v. Canada Post Corporation*, which affirmed that municipalities have the **right to set reasonable terms of access** to their rights-of-way—even for a federal Crown corporation—provided those terms are applied fairly and protect public assets.

Although limited in scope to Canada Post installations, this case reinforced Hamilton’s authority to manage the Right of Way in the public interest and informed the drafting of subsequent Municipal Access Agreements.

Development of the Right-of-Way (ROW) Management Guidebook

In parallel with the Canada Post decision, Hamilton developed a comprehensive **Right of Way Management Guidebook** to standardize permitting and siting processes across all utility and infrastructure sectors.

The Guidebook was based on best practices shared among major Canadian municipalities—including Toronto, Ottawa, Calgary, and Vancouver—and in collaboration with utility partners. It has since served as the **foundation for all right of way management** in Hamilton, providing a consistent framework for evaluating access requests, restoration standards, and liability protections.

The Guidebook was developed through a consultative process that included discussion at the Utility Coordinating Committee for input and consideration.

National Recognition by the Federation of Canadian Municipalities

The **Federation of Canadian Municipalities** highlighted Hamilton’s approach in its *Telecommunications and Rights-of-Way: A Handbook for Municipalities* (2016, updated 2020), noting Hamilton among municipalities developing *“next-generation” Municipal*

Access Agreements that emphasize transparency, cost recovery, and proactive coordination between utilities and municipalities (pp. 20, 62 link).

This recognition positioned Hamilton as a **national leader** in the modernization of municipal access frameworks and digital-infrastructure governance.

Alignment with Provincial Policy

The Province’s *Building Broadband Faster Act, 2021* and its *Guideline 4.0* adopted many of the same principles first demonstrated through Hamilton’s 2016–2026 Bell program—namely, **accelerated deployment combined with municipal cost protection and adherence to safety and restoration standards**.

Sections 14–16 of the Building Broadband Faster Act authorize ministerial intervention in access disputes but maintain that municipalities must not bear incremental costs or reduced control over technical standards.

Section 16 of the Building Broadband Faster Act explicitly states that:

Terms

(2) The order may require the municipality to provide the municipal service and right of way access set out in the order, and set terms governing the proponent and the municipality in respect of the municipal service and right of way access, which may include the following:

1. Implementation of adequate measures to mitigate the impact on the public of the municipal service and right of way access. As an option, the measures may include notification to the municipality and the public of matters concerning the municipal service and right of way access.
2. Provision of resources and compensation to address the impact on the municipality of the municipal service and right of way access.
3. Measures to address potential municipal liability arising from the municipal service and right of way access.

4. Technical standards that must be met to support the municipal service and right of way access.
5. Dispute resolution provisions.
6. Other terms.

Association of Municipalities of Ontario and Rural Ontario Municipal Association recognize the need for a Municipal Access Agreement and through Eastern Ontario Regional Network creates a "light" model.

The Association of Municipalities of Ontario and the Rural Ontario Municipal Association, in partnership with the Eastern Ontario Regional Network, have reaffirmed that municipalities and Internet Service Providers should continue to execute project-specific Municipal Access Agreements or equivalent project-level access arrangements for broadband builds undertaken under the *Building Broadband Faster Act*.

Through the *“Municipal Access Agreement-Light”* webinar and supporting guidance materials (EORN, *MAA-Light Webinar*, 2023), the Association of Municipalities of Ontario and Rural Ontario Municipal Association emphasized that, while the Build Broadband Faster Act establishes streamlined permitting timelines, it does not replace the need for a negotiated access agreement at the project level.

The Association of Municipalities of Ontario / Rural Ontario Municipal Association guidance encourages municipalities and Internet Service Providers to adopt a fit-for-purpose municipal access agreement or project agreement that:

- Defines installation methods, restoration standards, and inspection protocols;
- Allocates liability, indemnification, and relocation responsibilities; and
- Aligns with each municipality’s right-of-way management framework and cost-recovery policies.

Hamilton’s existing broadband model—particularly the Bell Fibre-to-the-Home program—already operates under this structure. The City’s current approach is therefore consistent with Association of Municipalities of Ontario and Rural Ontario

Municipal Associations direction: any new telecommunications build, including the Rogers *Accelerated High-Speed Internet Program* / *Universal Broadband Fund* proposal, should be supported by a formal project-level agreement to ensure compliance with City standards, uphold cost neutrality, and protect municipal assets.

Current Context – Rogers Accelerated High-Speed Internet Program / Universal Broadband Fund Proposal

Rogers Communications has proposed to serve approximately **7,000 rural properties** through the *Accelerated High-Speed Internet Program* and *Universal Broadband Fund*—a scale significantly smaller than Hamilton’s 200,000-premise Bell deployment but involving **approximately 700 kilometres of planned running line installation**.

Unlike Bell’s program—conducted under a City-approved framework with full cost recovery—Rogers has **not submitted a formal deployment plan** and has proposed **road-edge ploughing** as its preferred installation method. This represents a departure from Hamilton’s standard utility corridors and from the Council-endorsed Bell model.

Asset owners have determined that adopting this method would result in measurable additional costs: a **25% annual increase** in ditching program expenses (over **$300,000**) and a **12% increase** in culvert replacements (approximately **$156,000 annually**), as well as non-quantified operational and liability risks.

Departing from the established Bell Fibre-to-the-Home template and Council-approved Municipal Access Agreement framework may expose the City to other contractual challenges from other telecommunications companies, which continue to operate under a cost-neutral, precedent-based agreement premised on consistent municipal treatment across all telecommunications carriers.

Further and following recent provincial legislation under the Building Broadband Faster Act, Hamilton is proceeding with its accepted terms, conditions and standards that are

reflected in Section 16 that have been foundational in the Bell Fibre optic program and all other utility permitting.

Accordingly, **Corridor Management remains in a holding position** pending asset owner’s acceptance and Council’s direction on whether to maintain existing right of way standards and cost-recovery principles or to accept the added risk associated with non-standard installations that would impact multiple municipal assets.

References / Citations

- Telecommunications Act, S.C. 1993, c. 38
- Telecom Decision CRTC 2016-51 – City of Hamilton vs. Bell Canada (CRTC)
- PW20003/LS20001 – Telecommunications Industry Investments in the City (Bell Fibre Optic) (Jan 13 2020)
- ENG22.001 – Bell Fibre Optic Project Update (Sep 30 2022)
- PW20003(a) – Telecommunications 2024 (Apr 29 2024)
- City of Hamilton v. Canada Post Corporation, 2015 ONSC 3615 (CanLII)
- Federation of Canadian Municipalities – Telecommunications and Rights-of-Way Handbook (2020) (FCM)
- Building Broadband Faster Act, 2021 (S.O. 2021, c. 2, Sch. 1) and Guideline 4.0 (Feb 2025) (Infrastructure Ontario)
- City of Hamilton – Standards and Approved Products Committee and List (link)