



## **INFORMATION ON THE *LINE FENCES ACT***

**It is important to note that the arbitration procedure cannot be initiated if the construction of a fence has commenced or if a written contract has been entered into between the parties concerning the construction of fence.**

### **What is the Purpose of the Act?**

The *Act* establishes the principle that, if a landowner wants a line fence to mark the boundary between his or her land and the property of an adjoining owner, that landowner is entitled to construct a fence on the boundary line. If, however, neither owner wants a line fence, no fence is necessary.

The basic purpose of the *Act* is to provide a local procedure for arbitrating a disagreement between two (2) neighbouring landowners where one (1) owner wants to construct, repair or maintain a fence on their common boundary, but is unable to reach agreement with the other owner on:



- (i) the type of fence to be erected, or
- (ii) sharing the cost of a line fence, or
- (iii) both of these issues.



### **To What Lands is the Act Applicable?**

The *Act* is applicable to virtually all privately-owned lands in Ontario and to lands owned by the province and by municipalities except for:

- Ontario Crown lands that have never been patented; and
- Provincial and municipal public highways.



The *Act* is also applicable to lands owned by local boards, including school boards and conservation authorities.

It is not applicable to lands owned by the Government of Canada and its agencies, including Indian Reserves or by railway companies.

### **Who Administers the Arbitration Procedure?**

The Clerk of the Town in which the lands are located is responsible for the administration of the arbitration procedure.

Each local municipal council is required to appoint a sufficient number of fence-viewers to carry out the provisions of the *Act*.

## **How is the Procedure Initiated?**

If two adjoining owners are unable to reach agreement on the construction, reconstruction or repair of a line fence, either owner may initiate the arbitration procedure by submitting an application to the Clerk.

The *Act* makes it mandatory for an applicant to fill out Form 1, which includes a description of the boundary between the two properties.

It should be noted that a tenant is not eligible to submit an application.

Before submitting an application, an owner who wants to initiate the arbitration procedure should:

- Attempt to reach agreement with the adjoining owner;
- Discuss the matter informally with municipal staff in an attempt to have the dispute resolved without the need for a formal viewing;
- Make certain the *Act* is applicable to both properties; and
- Ensure that the boundary between the two properties is not in dispute. (If it is, the municipality has no role to play).



When an application is submitted, the municipality is required to schedule a viewing by three of the fence viewers, which must be not more than 30 days from the date that the application was received.

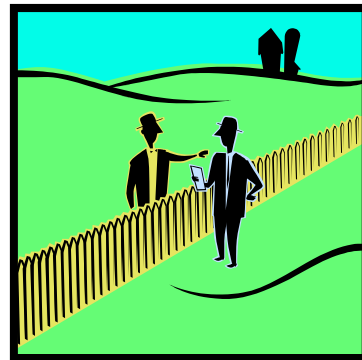
No viewings are scheduled between November 1<sup>st</sup> and March 31<sup>st</sup> and there is an administration fee of \$250 payable by the applicant when the Form 1 is submitted.

The Clerk notifies the owners and the three Fence Viewers of the date and time of the meeting for the arbitration, at least one full week in advance of the meeting.

### **How is a Decision Made on a Fencing Dispute?**

At the viewing, the three fence viewers are required to examine the premises and to hear from both owners and their witnesses, if any. In developing their decision, the Fence-viewers are required to consider:

- The needs of both owners;
- The nature of the terrain;
- The benefit to both owners of having their boundary marked by a fence;
- The nature of other fences in locality;
- Any municipal fencing by-laws; and
- Any other relevant factors.



After the viewing, the fence viewers make an award specifying either:

- That each owner is to construct, reconstruct or repair half of the fence; or
- That one owner is to construct, reconstruct or report the entire fence, with the other paying half of the costs incurred in doing this work.

The award provides a description of the work that is to be done, including the materials to be used.

The award also establishes dates by which the work is to be started and completed, and specifies how the cost of the proceedings, (i.e. the fees of the fence viewers and the municipality's administrative costs) are to be divided between the two owners.

An owner who is dissatisfied with the award can appeal it within 15 days of receiving a certified copy of the award from the municipality.

The owner appealing the award is required to service notice of appeal on the other owner and to file a copy of this notice, together with an affidavit of service, with the Clerk.

The appeal is then heard in the municipal office by a provincially appointed referee or deputy referee, whose decision is final.

### **How Can the Award be Enforced?**



If one owner (Owner 'B') does not do the work specified in the award, the other owner (Owner 'A') may, after giving Owner 'B' two weeks' notice by registered mail to Owner 'B', do or complete the work.

Owner 'A' is entitled to enter onto the property of Owner 'B' to the extent necessary to do this.

The *Act* makes it an offence for Owner 'B' to obstruct Owner 'A' from entering the property for this purpose.

The enforcement procedure is different if both Owner 'A' and Owner 'B' do the work specified in an award, but Owner 'A' claims that the work done by Owner 'B' does not comply with the award.

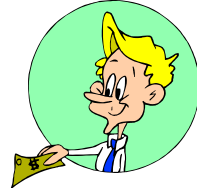
In this situation, Owner 'A' after giving Owner 'B' two weeks' notice, may request the municipality to have the fence-viewers reconvene to determine whether the work done by Owner 'B' complies with the award.

If the fence-viewers decide that it does not, they will then direct Owner 'B' to take appropriate action by a certain date to make the work comply.

If Owner 'B' does not obey the fence-viewers' directions, Owner 'A' may, after giving Owner 'B' a further two weeks' notice, do or complete the work directed by the fence-viewers in the same manner as in the situation described immediately above.

### **How Can One Owner Recover the Amount Owed by the Other Owner?**

Once Owner 'A' has done or completed the work in either of the two situations described above, he or she may then apply to have the fence viewers reconvene to review the completed work.



The procedure is somewhat different where an award requires Owner 'A' to do all the work specified in the award, with Owner 'B' paying a portion of the cost of the work to Owner 'A'.

If Owner 'B' fails to pay this amount, Owner 'A', after giving 28 days' notice to Owner 'B', may apply to have the fence viewers reconvene to review the completed work.

The fence viewers reconvene at the lands of the two owners to examine the work done by Owner 'A' and, if satisfied, prepare a certificate of default certifying the amount of money that is owned by Owner 'B' to Owner 'A'.

Owner 'A' can then recover this amount by depositing the certificate of default with the Clerk.

The amount is then placed on the collector's roll and collected from Owner 'B' in the same manner as municipal taxes, together with interest.

Owner 'A' receives this amount, with interest, when Owner 'B' pays the municipal taxes.

The municipal treasurer can pay the amount set out in the certificate to Owner 'A' immediately if the municipal council has passed a by-law to authorize this.

Alternatively, Owner 'A' may recover the amount owed by Owner 'B' by filing certified copies of the certificate and the fence-viewers' award with the clerk of the Small Claims Court.

### **Can an Award be Registered on Title?**

Either owner may register a certified copy of the fence viewers' award or certificate of default in the proper land registry office. The award and certificate then become charges upon the land affected by them.



An agreement between two adjoining owners may also be registered and enforced as if it were a Fence Viewers' award.

### **Removal of/or Damage to a Fence**

#### **Removal of a Fence**

A property owner may not remove any part of a line fence without giving six months notice of the intention to do so to the owner or occupant of the adjoining land, unless the adjoining owner or occupant has refused to pay for his/her portion of the fence as set out in the original fence viewers' award after being asked for the amount in writing.

Disputes concerning fence removal are subject to the same arbitration provisions set out for other line fence disputes under the *Act*.

#### **Damage of a Fence by a Tree**

If a tree falls across a line fence, the owner or occupant of the land on which the tree stood shall immediately remove the tree and repair any damage to the fence caused by the tree.



If the tree has not been removed 48 hours after the neighbouring owner has served written notice to remove the tree, that owner may remove it in the most convenient and inexpensive manner available, entering onto the land where the tree stood if necessary, and repair the fence.

The owner may also retain the tree as partial remuneration for the removal of the tree, and/or recover the costs through the fence-viewing process.

This information has been prepared as a guide only to the provisions of the *Line Fences Act*. For accuracy reference should be made to the *Act* itself. Refer to Ontario e-Laws site - <http://www.e-laws.gov.on.ca/> to access *Line Fences Act*.

For additional information please contact: Clerk's Department, 905-953-5300, Ext. 2212 or e-mail: [information@newmarket.ca](mailto:information@newmarket.ca)

### **Fees**

Administration fee - \$250

Fee for each fence viewers - \$50 (3 required) per visit

**Note: This document is available in alternative formats upon request.**