

Appendix 1: Information on the Line Fences Act

What is the Purpose of the Act?

The position of fence-viewer was created in 1793 by the first Provincial Parliament of Upper Canada. The first statute dealing with line fences was enacted in 1834. It was revised extensively in 1874 and 1913, and then appeared in substantially the same form until 1979, when it was again revised extensively by the Ontario Legislature. The Act was further amended in 1986, when the current appeal procedure was established.

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

The basic purpose of the Act is to provide a local arbitration procedure between adjoining owners where one wants to construct, reconstruct or repair a fence on their common boundary, but is unable to reach agreement with the other owner on:

- the type of fence;
- the sharing of the costs of the fencing work; or
- both of these issues.

The arbitration procedure established in the Line Fences Act applies to fencing disputes where the property of one or both adjoining owners is located in a municipality. Regulation 716, made under the Line Fences Act, establishes a similar arbitration procedure where the property of both adjoining owners is located in territory without municipal organization.

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.

The Act, other than the provisions dealing with former rail lines, is not applicable to lands in municipalities with bylaws that determine how the costs of line fences are to be apportioned between adjoining owners.

Who Administers the Arbitration Procedure?

The clerk of the local municipality in which the lands are located is responsible for administering the arbitration procedure, although this responsibility can be delegated to another staff member.

Each local municipal council is required to appoint a sufficient number of fence-viewers to carry out the provisions of the Act. This can be done at the start of a term of office, the start of each year, or when an owner applies to have a fencing dispute arbitrated.

The council is also required to set the remuneration that is to be paid to the fence-viewers when they arbitrate a fencing disagreement by conducting a viewing. This can be an hourly, daily or per viewing rate.

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 municipality. 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 that 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 municipality's fence-viewers, which must be not more than 30 days from the date that the application was received. (Municipal councils may, however, pass bylaws prohibiting the scheduling of viewings between November 1st and March 31st.)

The municipality is required to provide notice of the date and time of the viewing, at least one full week in advance, to both owners and to the three fence-viewers.

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 the locality; 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 repair the entire fence, with the other paying half of the costs incurred in doing this work.

If, however, the fence-viewers consider an equal division of responsibility unjust in the circumstances, they may

divide responsibility for the work between the two owners in whatever manner they consider appropriate.

It should be noted that, if one of the adjoining properties is owned by the province, the fence-viewers may not make the province responsible for more than 50 per cent of the work in their award.

The award provides a description of the work that is to be done, including the materials to be used. If there is a bylaw regulating fences in the municipality, the description in the award must conform to this bylaw.

The award also establishes dates by which the work is to be started and completed, and specifies how the costs 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 an 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 serve a notice of appeal on the other owner and to file a copy of this notice, together with an affidavit of service, with the municipality. The appeal is then heard in the municipal office by a provincially-appointed referee or deputy referee, whose decision is final.

How Can an 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, 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 in this case.

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 immediately 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 of 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 owed by Owner B to Owner A.

Owner A can then recover this amount by depositing the certificate of default with the municipality. 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 bylaw to authorize this.

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

When filed, the amount may then be levied against the goods, chattels and land of Owner B in the same manner as a judgement of the Small Claims Court.

Can an Award be Registered on Title?

Either owner may register a certified copy of a fence-viewers' award or of a certificate of default in the proper land registry office. The award and certificate of default 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.

How can Further Information be Obtained about the Act?

To obtain more information, please contact your local municipality or one of the following Municipal Services Offices of the Ministry of Municipal Affairs and Housing: