FACT SHEET

Ontario Federation of Agriculture

Line Fences Act

Line Fences and the Law in Ontario

Line fences mark the boundary between abutting properties. While section 3 of the *Line Fences Act* gives property owners the right to build and maintain line fences, it **does not** force property owners to build line fences to mark their boundaries.

The *Line Fences Act* never mentions livestock! Other statutes, such as the *Municipal Act* and the *Pounds Act*, as well as common law, impose a duty on farmers with livestock to ensure their animals do not stray and damage neighbouring property, including crops.

When adjoining property owners cannot agree how to share the construction, repair or maintenance of their line fence, and one owner still wants a fence built or repaired, the one wanting the fence can turn to the dispute resolution process in the Act by contacting their municipal clerk and asking for the Fence-Viewers. However, before doing this, they should;

- make every effort to reach an agreement with their neighbour,
- try to resolve the matter informally with their municipal clerk,
- be sure the Act applies to both properties (not all lands are subject to the Act), and most important,
- be sure the location of the boundary is not the problem; the *Line Fences Act* cannot be used to settle disputes over the location of a boundary

When the Fence-Viewers have been requested, the Clerk informs the parties in writing of the date and time of the viewing, usually between 1 week and 30 days after the notice was mailed.

Viewings scheduled between November 1 and March 31 may be postponed due to possible adverse conditions. The Clerk should brief the Fence-Viewers on the points in dispute before their site visit. Three Fence-Viewers meet at the site. Once on site, they study the location for the proposed fence or examine the condition of the existing fence. The Fence-Viewers may hear evidence under oath from either party or witnesses. Section 7(2) lists the matters the viewers must consider before making their Award. They are;

- the suitability of the fence to the needs of each party,
- the nature of the terrain where the fence will be located,
- the benefit to both from having the boundary marked by a fence,
- the nature of fences in the area, and
- any other factors they believe relevant.

The Award must be signed by two of the three Fence-Viewers present. It notes the location of the line fence; usually the property boundary. However, if the terrain makes this difficult because of a pond or swamp, the fence may be placed all or partly on one property. If so, the location of the fence does not affect title to the land. The Award describes the style of the fence to be built, including the materials and completion date. If there is a municipal fencing bylaw under the *Municipal Act*, the award must conform to it.

Fencing bylaws are most common in urban municipalities but some rural municipalities have them too.

Finally, the Award states how the work is to be shared and who pays for the work ordered. It may order each party to build or repair a designated

half of the fence or one to do all the work and the other to pay half of the cost. However, if the Fence-Viewers feel an equal share of cost or labour is unfair, they can divide the cost or work or both as they see fit! One example where a 50-50 share would not be fair is where one party has special fencing needs, such as a deer farm. Finally, there is no right-hand rule in the *Line Fences Act* to indicate responsibility for future repairs or maintenance! The Fence Viewers Award will indicate which section(s) of the fence are each person's responsibility.

If one of the properties is rented, the tenant is responsible for informing the property owner of the notice of the attendance of the Fence-Viewers. If not, then the tenant is liable for any costs or damages awarded against the property owner by the Fence-Viewers.

The Fence-Viewers' Award can be registered on title in the land registry office, making it binding on the current owners as well as on future owners of the properties. An agreement on cost sharing for a line fence reached without the Fence-Viewers can also be registered on title.

A property owner unhappy with the Fence-Viewers' Award may appeal it to the Referee by notifying his neighbour within 15 days of receiving the Fence-Viewers' Award, by registered mail or hand delivery. A copy of this notice and the appeal fee ($335.00) is filed with the Clerk. The Referee sets the time and place for the hearing. Appeals are held locally, often in the municipal offices. The Clerk informs the parties in writing of the date, time and place for the appeal hearing.

At the appeal hearing, the Referee examines the parties and their witnesses under oath. The referee may inspect the actual location of the line fence in dispute. Following the appeal hearing, the Referee either affirms, alters, sets aside or corrects any error in the Award of the Fence-Viewers. He may order payment of the costs of the appeal, excluding Referee's fees, by either or both parties. The decision of the Referee may only be appealed to Divisional Court, a costly exercise, on matters of fact or law.

Lastly:

The *Line Fences Act* does not apply to all fencing situations. Some properties, such as schools and cemeteries, have their own fencing responsibilities. Fences along roads and highways **are not** the responsibility of the road authority but are the responsibility of the property owner fronting on the road. However, the Ministry of Transportation (MTO) takes full responsibility for fences along the 400 series highways. Fences along active railway rights-of-way are a railway responsibility.

The *Line Fences Act* does address fencing of abandoned railway rights-of-way. For information on this subject, please review the OFA fact sheet, abandoned railway rights-of-way, or contact OFA's Guelph Office.

For more information on the *Line Fences Act*, click on this link https://www.ontario.ca/page/line-fences-act, contact your OFA Field Representative or OFA's Guelph Office.

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