



## THE LINE FENCES ACT

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## LINE FENCES ACT


- **Purpose:** to arbitrate fencing disputes
- **About:** (1) Sharing the Costs  
(2) Type of Fence  
(3) Both Matters.
- **Decided by:** Local Fence-Viewers
- **Position Created in 1793**
- **Elected annually until about 1850**
- **Now appointed by local councils (s. 2)**
- **Opting out of the Act (s. 26)**



## **GENERAL RULES**

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- **Only owners can apply for arbitration (s. 4)**
- **Act must be applicable to both properties**
- **Owners must agree on property boundary**
- **No arbitration if fence already built**
- **Most fencing disputes are settled informally**



## **TO WHAT LANDS IS ACT APPLICABLE?**

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- **Another private property (s. 4)**
- **A municipal park or other property (s. 23)**
- **A municipal road (s. 25)**
- **An unopened municipal road allowance (s. 19)**
- **A public school (s. 23 and *Education Act*)**
- **Conservation authority lands (s. 23)**
- **A provincial park or other property (sub 24(1))**
- **Unpatented Ontario Crown lands (sub 24(2))**
- **A provincial highway (s. 25)**
- **A federally-owned property?**
- **An Indian reserve?**
- **An active railway corridor?**



## **ARBITRATION PROCEDURE**

- **Hearing must be held within 30 days** (sub 4(3))
- **But can be postponed, if necessary** (sub 5(1))
- **Winter hearings can be prohibited** (sub 5(2))
- **“Clerk” responsible for notices** (4(2),(3))
- **Three fence-viewers must attend** (sub 4(2))
- **Fence-viewers conduct a hearing** (s. 7)
- **Then they make an “award”** (sub 8(1))
- **Only two need to sign the award** (sub 8(1))
- **Owners have 15 days to appeal** (s. 10)
- **Appeal heard by Referee** (sub 10(5),(6))



## **FENCE-VIEWERS' AWARD**

- **Hear both owners and witnesses** (s. 7)
- **Needs and wishes of both owners?** (sub 8(2))
- **All relevant circumstances** (sub 8(2),(3))
- **50/50 sharing of costs unless “unjust”** (sub 8(1))
- **Type of fence [in detail]** (sub 8(1))
- **Starting and completion dates** (sub 8(1))
- **What if one owner does not show up?**
- **Other possible situations**



## **FENCING OF RAIL LINES**

- *Railways Act* (Canada) requirement
- Companies could apply for exemption
- Applied to active rail lines only
- Applied in rural areas only (*apparently*)
- Replaced by *Railway Safety Act* in 1990's
- Issue to be dealt with by regulation.



## **FENCING OF FORMER RAIL LINES**

(section 20)

- Added to Act in 1967
- Transferred responsibility to new owner
- Also applies to municipalities and province
- No mechanism for an exemption
- Has become an awkward political issue
- How did this come about?



## **1979 REVISION OF ACT**

- Section 20 was not revised.
- OFA strongly opposed to change!!
- Others probably not aware of it
- Then former rail lines acquired for trails
- Discovered a very expensive responsibility
- Requested amendments to the Act
- Ministry response: talk to the OFA
- Result: no common ground.



## **RECENT EVENTS**

- Most trail owners not building fences
- Reasons: (1) Prohibitive Costs  
(2) "Excessive" demands
- Approach of Caledon and Bruce County
- Two applications in 2000 for arbitration:
  - County of Elgin
  - United Counties of Leeds and Grenville
- Fence-Viewers: no jurisdiction to arbitrate



## **"LEGAL" DECISIONS**

- Adjoining owners appealed in both cases
- Heard in 2000 by same Deputy Referee
- S. 20 only applicable at initiative of new owner
- Otherwise, arbitration provisions apply
- Elgin County case went to Court in 2002
- Court: new owner clearly responsible.



## **CURRENT SITUATION**

- Stalemate in most cases
- Adjoining owners frustrated by inaction
- Trail owners seeking relief by means of:
  - (1) Amendments to section 20; or
  - (2) Finding a legal loophole
- Current court case in Dufferin County
- By-law deems trail to be a highway
- Highways exempt from Act
- Not helpful to other trail owners
- Possible solutions?



## RELEVANT LEGISLATION

(in alphabetical order)

***Education Act*** (para. 34 of sub. 171(1))

***Line Fences Act***

***Municipal Act, 2001*** (s. 11 and 98)

***Occupiers' Liability Act*** (s. 3 and 4)

(Ontario) ***Railways Act*** (s. 114)

(Canada) ***Railway Safety Act*** (s. 24)

***Trespass to Property Act***



## MUNICIPAL ROADS

- Why are roads important?
  - (1) Practical, e.g., maintenance and safety
  - (2) Personal, e.g., access and mobility
  - (3) Legal, e.g., ownership and liability
- Legal term is "highway"
- All lands "between lateral boundaries"
- Includes bridges and other structures
- Not just roads used by motor vehicles



## HIGHWAY TERMINOLOGY

■ Technical Terms	■ Other Common Terms
1) Roadway	1) Road/street
2) Shoulder/Curb	2) Lane
3) Boulevard/Sidewalk	3) Unopened Road Allowance
4) Controlled-access road	4) Travelled portion
5) Untravelled portion	5) Freeway/Expressway
6) Connecting Link	6) Arterial road
7) Through highway	7) Collector road
8) Access road/Common road	8) Trespass road
9) Private Toll Road	9) Forced road
10) Public forest road	10) Given road

- Terminology depends on purpose of Act.



## KEY STATUTES

### *Highway Traffic Act (HTA)*

1. Administered by MTO
2. Common rules for *all* public highways
3. Traffic "Rules of the Road" (Part X)
4. "Default" speed limits (s. 128)
5. Size and weight limits (Parts VII and VIII)



## **KEY STATUTES**

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### ***Public Transportation and Highway Improvement Act (PTHIA)***

1. Administered by MTO
2. Revised significantly in the 1990's
3. Now deals with provincial highways (s. 7)
4. Also powers of MTO Minister (s. 8 and 29)



## **KEY STATUTES**

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### ***Municipal Act, 2001 (MA)***

1. Administered by MMA
2. Came into force on January 1, 2003
3. Contains most municipal road provisions
4. Major revision of previous MA provisions
5. Cooperative effort with MTO, OGRA etc.
6. Many repeals, e.g., RMA, PTHIA



## **KEY MUNICIPAL ACT POWERS**

- **Section 11: highways sphere of jurisdiction**
- **Includes traffic and parking on highways**
- **Subject to limits in HTA, e.g., speed limits**
- **Sections 9 and 10: related powers**
- **Section 8: natural person powers**
- **Sections 24 to 68: specific powers, e.g., entry**
- **Section 35: can restrict "right of passage"**



## **WHAT IS A MUNICIPAL HIGHWAY?**

(section 26)

- **If a highway on January 1, 2003**
- **"Established" by by-law after Jan. 1/03**
- **Transferred by MTO under the PTHIA**
- **Road allowance laid out in original survey**
- **Road shown on registered plan of subdivision**
- **Land acquired for road widening (sub. 31(6))**

## **CLASSES OF MUNICIPAL HIGHWAYS**

(section 31)

### **1. Highways for public use**

- **Three possible methods:**

1. **Establishment (31(1))**
2. **Dedication by owner *and* Acceptance by municipality**
3. **Transferred by MTO**

- **Liability provisions apply (s. 44)**

## **CLASSES OF MUNICIPAL HIGHWAYS**

(section 31)

### **2. Highways *not* assumed for public use (31(4))**

- **Unopened road allowances, and**
- **Roads on registered plan of subdivision**
- **Liability provisions do *not* apply**
- **By-law now needed to assume (31(2))**



## **JURISDICTIONAL ISSUES**

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- **Limited to own highways (s. 27)**
- **Boundary roads (s. 29)**
- **Boundary road agreements (s. 29.1)**
- **Unorganized territory (s. 32)**
- **Private roads (s. 23, 48)**



## **TWO-TIER SYSTEMS**

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(sections 52 to 55)

- **Both tiers can establish a road system**
- **Upper-tier can add or remove roads**
- **Consent of lower-tier not required**
- **Consistent with MTO/municipal relationship**
- **Can add or remove bridges on lower-tier roads**
- **Sidewalks remain a lower-tier responsibility**



## **RELATIONSHIP IN TWO-TIER SYSTEMS**

(sections 56 to 59)

- **Upper-tier roads prevail at intersections**
- **No other upper-tier powers over local roads**
- **Significant change for regional municipalities**
- **Setbacks from upper-tier roads**
- **Signs within 400 m. of upper-tier roads**



## **OTHER ISSUES**

- **Establishing a highway** (sub. 31(1) and (2))
- **Establishing a toll highway** (s. 40)
- **Temporary road closings** (s. 11)
- **Power to delegate temporary closings** (s.42)
- **Permanent road closings** (s. 11 and 34)

Public notice required (see s. 251)

Notice to Canada may be required

Consent of owner may be required

Closing by-law must be registered

Can sell closed road to anyone.

Surplus land provisions apply (see s. 268)



## **OTHER NOTICE REQUIREMENTS**

- **Alteration if access being removed** (sub. 34(2))
- **Otherwise, no notice required for alterations**
- **Designating controlled-access highways** (s. 36 to 39)
- **Notice to individual owners also required** (sub 36(3))
- **Prohibiting *all* vehicles permanently** (s. 41)
- **Naming/renaming municipal roads** (s. 47)
- **Naming/renaming private roads** (s. 48)



## **LIABILITY AND MINIMUM MAINTENANCE STANDARDS (MMS)**

(section 44)

- **New MA continues previous rules**
- **Exception: limitation period now two years.**
- **Section 44 applies to “assumed” roads only**
- **Must keep roads in a “state of repair that is reasonable in the circumstances”** (sub. 44(1))
- **Court decisions resulted in MMS** (by regulation)
- **An additional defence for municipalities**
- **Not liable if MMS have been met** (sub. 44(3)).



## **RELEVANT LEGISLATION**

(in alphabetical order)

- *Highway 407 Act* (1998)
- *Highway 407 East Completion Act* (2001)
- *Highway Traffic Act*
- *Limitations Act, 2002* (section 4)
- *Local Roads Board Act*
- *Motorized Snow Vehicles Act*
- *Municipal Act, 2001* and Reg. No. 239-02 (MMS)
- *Northern Services Boards Act*



## **RELEVANT LEGISLATION**

- *Occupiers' Liability Act* (sub. 4(4))
- *Off-Road Vehicles Act* (plus regulations under HTA)
- *Public Lands Act* (sections 48 to 55.1)
- *Provincial Parks Act* (section 3)
- *Public Transportation and Highway Improvement Act*
- *Registry Act* (section 88)
- *Road Access Act*
- *Statute Labour Act*