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c 216 Line Fences Act

Ontario

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CHAPTER 216

The Line Fences Act

1.—(1) In this Act,

Interpre-
tation

- (a) “judge” means a judge of the county or district court;
- (b) “occupied lands” does not include so much of a lot as is unenclosed, although a part of it is enclosed and in actual use and occupation.

(2) Where, within the meaning of section 3, there is a dispute between owners or occupants of lands situate in different local municipalities, Idem

- (a) “fence-viewers” means two fence-viewers of the municipality in which is situate the land of the owner or occupant notified under clause *a* of section 3, and one fence-viewer of the municipality in which is situate the land of the person giving the notice except that in case of a disagreement within the meaning of clause *d* of that section “fence-viewers” means fence-viewers from either or both municipalities;
- (b) “in which the land is situate” or “in which the land lies” means in which is situate the land of the owner or occupant so notified under clause *a* of section 3.

(3) This Act applies *mutatis mutandis* to unoccupied land as well as to occupied land in any township in a county or district if the council of the township passes a by-law declaring that this Act so applies, and if a by-law is passed it is the duty of the clerk of the township to send forthwith a true copy of it to the Department of Municipal Affairs. R.S.O. 1950, c. 209, s. 1. By-law making Act apply to unoccupied lands in township

2.—(1) Owners of adjoining occupied lands shall make, keep up and repair a just proportion of the fence that marks the boundary between them or, if there is no fence, they shall make and keep up and repair the same proportion of a fence to mark such boundary. Duties of owners of adjoining occupied lands

(2) Owners of unoccupied land that adjoins occupied land, upon the unoccupied land becoming occupied, are liable to Unoccupied land

keep up and repair such proportion, and in that respect are in the same position as if their land had been occupied at the time of the original fencing, and are liable to the compulsory proceedings hereinafter mentioned.

Unopened
road
allowance

(3) Where there is an unopened road allowance lying between occupied lands and not enclosed by a lawful fence, it is the duty of the fence-viewers, when called upon, to divide the road allowance equally between the owners of the occupied lands, and to require each owner to make, keep up and maintain a just proportion of fence to mark the division line, but nothing in this section in any way affects or interferes with the rights of the municipality in the road allowance or is deemed to confer any title therein upon such owners or either of them. R.S.O. 1950, c. 209, s. 2.

Disputes
between
owners

3. Where an owner of land desires fence-viewers to view and arbitrate as to what portion of such fence each owner shall make, keep up and repair, or as to the condition of an existing line fence and as to repairs being done to it,

- (a) either owner may notify (Form 1) the other owner or the occupant of the land of the other owner that he will, on a day named, not less than one week from the service of the notice, cause three fence-viewers of the locality to arbitrate in the premises;
- (b) the owner so notifying shall also notify (Form 2) the fence-viewers not less than one week before their services are required;
- (c) the notices in both cases shall be in writing signed by the person notifying, and shall specify the time and place of meeting for the arbitration, and the notice to an owner may be served by leaving it at the place of abode of the owner or occupant with some grown-up person residing thereat, or, in case of the land being untenanted, by leaving the notice with any agent of the owner;
- (d) an owner notified may, within the week, object to any or all the fence-viewers notified, and in case of disagreement, the judge shall name the fence-viewers who are to arbitrate. R.S.O. 1950, c. 209, s. 3.

Duty and
liability of
occupants
as to notify-
ing owners

4. An occupant who is not the owner so notified shall immediately notify the owner, and, if he neglects so to do, is liable for all damage caused to the owner by such neglect. R.S.O. 1950, c. 209, s. 4.

5. The fence-viewers shall examine the premises and, if required by either party, shall hear evidence and may examine the parties and their witnesses on oath. R.S.O. 1950, c. 209, s. 5. Duties and powers of fence-viewers

6.—(1) The fence-viewers shall make an award (Form 3), signed by any two of them, respecting the matters in dispute and the award shall specify the locality, quantity, description and the lowest price of the fence awarded to be made and the time within which the work shall be done, and shall state by which of the parties or in what proportion the costs of the proceedings are to be paid. Award of fence-viewers

(2) In making the award, the fence-viewers shall have regard to the nature of the fences in use in the locality, the pecuniary circumstances of the parties and the suitability of the fence to the wants of each of them. Character of fence

(3) Where, from the formation of the ground by reason of streams or other causes, it is, in the opinion of the fence-viewers, impracticable to locate the fence upon the line between the lands of the parties, they may locate it either wholly or partly on the land of either of the parties where it seems to be most convenient, but such location does not in any way affect the title to the land. Location of fence

(4) The fence-viewers may employ an Ontario land surveyor and have the locality described by metes and bounds. R.S.O. 1950, c. 209, s. 6. Employment of surveyor

7. The award shall be deposited in the office of the clerk of the municipality in which the land of the owner who initiated the proceedings is situate, and may be proved by a copy certified by the clerk, and notice in writing of its being made shall be given by the clerk to all parties interested. R.S.O. 1950, c. 209, s. 7. Deposit of award etc.

8. The judge may, on application of either party, extend the time for making the fence as he deems just. R.S.O. 1950, c. 209, s. 8. Extending time for making fence

9.—(1) The party desiring to enforce the award shall serve upon the owner or occupant of the adjoining land a notice in writing requiring him to obey the award, and if it is not obeyed within one month after service of the notice may do the work that the award directs, and may immediately take proceedings to recover its value and the costs from the owner by action in the division court of any division in which any part of the land affected by the award is situate. Award, how enforced

Collection
of debt and
costs as
taxes

(2) Instead of requiring execution to be issued upon the judgment so recovered, the party entitled to enforce the judgment may obtain a certificate from the clerk of the division court of the amount due for debt and costs in respect of the judgment, and is entitled, upon lodging the certificate with the clerk of the municipality, to have the amount so certified placed upon the collector's roll, and the amount may be collected in the same manner as taxes are collected, and is until so collected or otherwise paid a charge upon the land liable for the payment thereof, and in such case execution shall not thereafter issue on the judgment. R.S.O. 1950, c. 209, s. 9.

Award to be
a charge on
land, if
registered

10.—(1) The award may be registered in the proper registry or land titles office and when registered is a charge upon the land affected by it.

How
registered

(2) Registration may be by deposit of a duplicate of the award or of a copy, verified by affidavit, together with an affidavit of the execution of the award. R.S.O. 1950, c. 209, s. 10.

Appeals

11.—(1) Any person dissatisfied with the award may appeal therefrom to the judge.

Notice of
appeal

(2) The appellant shall, within one week from the time when he was notified of the award, serve upon the fence-viewers and all parties interested a notice in writing of his intention to appeal, and the notice may be served as other notices mentioned in this Act.

To clerk

(3) The appellant shall also deliver a copy of the notice to the clerk of the division court of the division in which the land lies, and the clerk shall immediately notify the judge of the appeal and the judge shall fix a time and place for the hearing of the appeal and shall communicate the same to the clerk, and, if he thinks fit, may order such sum of money to be paid by the appellant to the clerk as will be a sufficient indemnity against the costs of the appeal.

Notice of
hearing

(4) The clerk shall notify the fence-viewers and all parties interested of the time and place of hearing, in the manner hereinbefore provided for the service of other notices under this Act.

Powers of
judge

(5) The judge shall hear and determine the appeal and may set aside, alter or affirm the award, or correct any error therein, and may examine the parties and their witnesses on oath, and may inspect the premises and may order payment of costs by either party and fix the amount of the costs.

Decision of
judge to
be final

(6) The decision of the judge is final and the award, as altered or affirmed, shall be dealt with in all respects as it would have been if it had not been appealed from.

(7) The practice and procedure on the appeal, including the fees payable for subpoenas and the conduct money of witnesses, shall be the same, as nearly as may be, as in the case of a suit in the division court. Procedure

(8) Where the award affects land in two or more counties or districts, the appeal may be to the judge of the county or district in which any part of the land is situate. R.S.O. 1950, c. 209, s. 11. Where land in different counties

12.—(1) Each fence-viewer is entitled to \$5 or such larger amount, not exceeding \$10, as the council by by-law fixes for every day's work under this Act, and an Ontario land surveyor and a witness is entitled to the same compensation as if subpoenaed in a division court. R.S.O. 1950, c. 209, s. 12 (1); 1956, c. 42, s. 1. Fees to fence-viewers, surveyors and witnesses

(2) The corporation of the municipality shall, at the expiration of the time for appeal or after appeal, as the case may be, pay to the fence-viewers their fees, and shall, unless the fees are forthwith repaid by the person adjudged to pay the fees, place the amount upon the collector's roll as a charge against such person, and the amount may be collected in the same manner as municipal taxes. R.S.O. 1950, c. 209, s. 12 (2). Payment of fence-viewers' fees

13.—(1) If the judge inspects the premises or hears the appeal at a place other than the county or district town, he is entitled to be paid the actual expenses incurred by him and, in the order setting aside, altering or affirming the award, shall fix the amount of such expenses and name the person by whom the amount is to be paid. Judge's expenses

(2) The judge shall be paid by the corporation of the municipality the amount so fixed, and it shall be collected in the same manner as is provided in respect to the fence-viewer's fees. R.S.O. 1950, c. 209, s. 13. Municipality to pay expenses and collect amount

14. Any agreement in writing (Form 4) between owners respecting a line fence may be filed or registered and enforced as if it was an award of fence-viewers. R.S.O. 1950, c. 209, s. 14. Enforcement of agreements

15.—(1) The owner of the whole or part of a line fence that forms part of the fence enclosing the occupied or improved land of another person shall not take down or remove any part of such fence, Certain fences removable on notice

(a) without giving at least six months previous notice of his intention to the owner or occupant of the adjacent enclosure unless the last-mentioned owner or occupant, after demand made upon him in writing by the

owner of the fence, refuses to pay therefor the sum determined as provided by section 6; or

- (b) if such owner or occupant will pay to the owner of the fence or part thereof such sum as the fence-viewers may award to be paid therefor under section 6.

Other
provisions
of Act
to apply

(2) The provisions of this Act for determining disputes between the owners of adjoining occupied lands, the manner of enforcing awards and appeals therefrom and the forms and all other provisions of this Act, so far as applicable, apply to proceedings under this section. R.S.O. 1950, c. 209, s. 15.

Where tree
thrown
down across
a line fence

16.—(1) If any tree is thrown down by accident or otherwise across a line fence, or in any way in and upon the land adjoining that upon which the tree stood, causing damage to the crop upon such land or to such fence, the owner or occupant of the land on which the tree stood shall forthwith remove it and also forthwith repair the fence and otherwise make good any damage caused by the falling of the tree.

When injured
party may
remove tree

(2) On his neglect or refusal so to do for forty-eight hours after notice in writing to remove the tree, the injured person may remove it in the most convenient and inexpensive manner, and may make good the fence so damaged, and may retain the tree to remunerate him for such removal, and may also recover any further amount of damages beyond the value of the tree from the person liable to pay it.

Right of
entry

(3) For the purpose of such removal, the owner of the tree may enter into and upon the adjoining land doing no unnecessary spoil or waste.

Fence-
viewers to
decide
disputes

(4) All questions arising under this section shall be adjusted by three fence-viewers of the municipality and the decision of any two of whom is binding upon the parties. R.S.O. 1950, c. 209, s. 16.

FORM 1

(Section 3)

NOTICE TO OPPOSITE PARTY

Take notice that, and
....., three fence-viewers of this locality, will attend
on the..... day of, 19...., at the
hour of....., to view and arbitrate upon the line fence
in dispute between our lands, being lots (or parts of lots) *one* and *two* in
the.....concession of the township of.....in
the county of.....

Dated the.....day of, 19....

A. B.,

Owner of lot 1.

To C. D.,

Owner of lot 2.

R.S.O. 1950, c. 209, Form 1.

FORM 2

(Section 3)

NOTICE TO FENCE-VIEWERS

Take notice that I require you to attend at.....on the
.....day of, 19....,at the hour of
....., to view and arbitrate on the line fence between my land and
that of, being lots (or parts of lots) Nos.
one and *two* in theconcession of the township of.....
in the county of.....

Dated the.....day of, 19....

A. B.,

Owner of lot 1.

To

Fence-viewers.

R.S.O. 1950, c. 209, Form 2.

FORM 3

(Section 6)

AWARD

We, the fence-viewers of (*name of the locality*), having been nominated to view and arbitrate upon the line fence between of (*name and description of owner who notified*) and (*name and description of owner notified*), which fence is to be made and maintained between (*describe land*), and having examined the land and duly acted according to *The Line Fences Act*, award as follows: That part of the line that commences at and ends at (*describe the points*) shall be fenced, and the fence maintained by, and that part thereof that commences at and ends at (*describe the points*) shall be fenced, and the fence maintained by The fence shall be of the following description (*state the kind of fence, height, material, etc.*) and shall cost at least per rod. The work shall be commenced within days and completed within days from this date, and the costs shall be paid by (*state by whom to be paid; if by both, in what proportion*).

Dated the day of, 19.....

(Signatures of fence-viewers)

Witnesses:

R.S.O. 1950, c. 209, Form 3.

FORM 4

(Section 14)

AGREEMENT

We, and, owners respectively of lots (*or parts of lots*) *one* and *two* in the concession of the township of, in the county of, do agree that the line fence that divides our lands shall be made and maintained by us as follows: (*follow the same form as award*)

Dated the day of, 19.....

(Signatures of parties)

Witnesses:

R.S.O. 1950, c. 209, Form 4.