

ABANDONED RAILWAY RIGHTS-OF-WAY

Farmers and other rural landowners often face unique challenges when their property either abuts or is crossed by an abandoned railway right-of-way. Among the concerns farmers have expressed to us are biosecurity, dogs running loose, farm crossing use, fencing, impacts on farm practices, municipal drain maintenance, parking, policing, predator control, trespass, vandalism and weed control. Converting former railway lines to recreational uses doesn't eliminate the unique problems faced by farmers abutting a former railway right-of-way. However, effective management can lessen the impact of some of them on adjacent farmers and landowners.

Responsibility for fencing abandoned railway rights-of-way has long been a contentious issue. Prior to January 1, 2007, section 20 of the *Line Fences Act* clearly assigned total responsibility for the construction, repair or maintenance of fences along former railway rights-of-way to whoever acquired these lands. There was no cost sharing for fences along former railway rights-of-way between the owners of the right-of-way and the owners of abutting lands. In October 2002, the Ontario Superior Court of Justice in London ruled that the wording of section 20 was "precise and unambiguous" and that "the plain meaning of section 20 (1)(c) clearly establishes the municipality is liable for the entire cost of fencing when fencing is sought by the abutting land-owners." In this case, the municipality owned the right-of-way.

In 2006, amendments to the *Line Fences Act* changed Section 20. Under the amendment, farmers retained their statutory rights requiring that whoever has acquired the former railway right-of-way continues to be solely responsible for building and maintaining the

fences along it. However, farmers must now notify the owners of the right-of-way in writing of their need for the fences to be constructed, kept up or repaired in order to receive a fence.

The significant change effects non-farm property owners. They must now cost-share the fences along the former railway right-of-way between themselves and the owners of the right-of-way. If they are not prepared to cost-share the fence, then no fence will be built.

OFA's Abandoned Rights-of-Way Policy

The OFA encourages the short, intermediate and long-term retention of abandoned rights-of-way by the province as an integral part of a rural redevelopment and revitalization strategy.

Occasionally, surplus rights-of-way are abandoned by their holding authority, e.g. CNR, CPR, Ontario Hydro. OFA opposes sale of these right-of-ways for non-agricultural purposes if the right-of-way was agricultural before severance, is found in a predominately agricultural area, and would not have been permitted by the municipal official plan.

As part of the abandonment process, the original holding authority must

complete an environmental audit of the property to identify any site contamination. Should the environmental audit identify site contamination, the holding authority must then undertake a thorough clean-up of the property, so the purchaser can possess "clean" land.

When the government determines ownership is in the

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provincial interest, it must give the adjacent landowners the first right to lease the right-of-way under an interim use agreement, until the government decides to convert the right-of-way into an acceptable public use, such as a transportation or utility corridor.

When a government or non-government agency obtains ownership, responsibility for weed control, fencing, drainage and farm crossings must transfer to the new owner. There must be provisions that guarantee farmers' rights to freely carry on normal farm practices such as irrigation, spraying and manure spreading, on adjacent lands.

For more information on abandoned railway rights-of-way, contact your local OFA Member Service Representative or OFA's Guelph office.

Revised June 2018