

Line Fences and Highways

The [Highway Traffic Act](#) defines a highway as “a common and public highway, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof”. Therefore, every public road, from township concession roads to county roads to urban streets to provincial highways to multi-lane expressways are “highways”. And the term covers the entire width of the right-of-way, from property line to property line, consisting of the travelled portion, shoulders, ditches and up to the property line between the highway and abutting properties.

Since few farms, or other properties for that matter, do not have direct road access, who is responsible for the fence along the front of the farm? Is it treated as a “line fence”, and cost-shared between the farmer and the road authority (MTO or municipality)? No, fences separating a highway from abutting properties are not cost-shared between the property owner and the road authority. Section 25 of the [Line Fences Act](#) (Ontario) exempts public highways from the provisions of the Act, namely its cost-sharing provisions. So, broadly speaking, fences along the frontage of your farm are your responsibility.

Fences along Ontario’s “controlled access highways” are treated differently by MTO. “Controlled access highways” are primarily the 400-series of highways, plus the Queen Elizabeth Way and portions of Highway 11. Maintaining

adequate fences along these highways is viewed as a highway safety issue; namely keeping people, vehicles and animals off the right-of-way due to higher vehicle speeds. For Ontario’s “controlled access highways”, MTO builds and maintains these fences. They are not built on the property line, but are situated completely on the highway right-of-way, thereby ensuring that MTO has sole responsibility for their construction, maintenance and repair.

Occasionally, MTO or a municipality will acquire land from abutting properties to accommodate a highway expansion project. As part of the land acquisition process, either through purchase or expropriation, the abutting owners may be able to obtain a new frontage fence, as part of their settlement.

Line Fences Act

Act does not apply to public highways

25 (1) Despite sections 23 and 24 (below), this Act does not apply to any lands that constitute a public highway including lands abutting a public highway that are held as a reserve by a municipality or other public authority to separate lands abutting the reserve from the public highway.

Agreements under subs. 23 (3)

(2) Subsection (1) does not apply so as to prevent the entering into of agreements under subsection 23 (3) with respect to line fences to mark the boundary between a public highway or a reserve and adjoining lands.

Act applies to lands of municipality or local board

23 (1) This Act applies to lands owned by a municipality and to lands owned by a local board within the meaning of the *Municipal Affairs Act*, including a conservation authority.

(2) Repealed: 2002

For further information, contact your local OFA Member Service Representative or OFA's Guelph office.

Revised May 2018

Agreements

(3) The council of a municipality or a local board may enter into agreements with owners of land adjoining land owned by the municipality or the local board, as the case may be, for the construction, reconstruction, repair, maintenance and keeping up of line fences to mark the boundary of such lands, and any such agreement when reduced to writing in the prescribed form may be registered and enforced as if it were an agreement between owners under section 16.

Act binds Crown

24 (1) Except as otherwise provided in subsections (2) and (3), this Act applies so as to bind the Crown in right of Ontario.

Exception

(2) This Act does not apply to lands of the Crown in right of Ontario that at no time have been disposed of by the Crown in right of Ontario by letters patent, deed or otherwise.

Limitation

(3) Despite any other provision in this Act, an award made under section 8 in respect of lands vested in the Crown in right of Ontario shall not require the Crown to be responsible for more than one-half of the fence or to pay to the adjoining owner an amount exceeding 50 per cent of the cost of the fence.

Public Transportation and Highway Improvement Act

Agreements re: fences

30 (6) The Minister may agree with the owner of property adjoining the King's Highway with respect to the moving, removal or construction of a wire or other type of fence along the King's Highway and may pay the owner therefor.