

Good Fences Make Good Neighbours

By Brian Madigan



From Hadrian's Wall to the Great Wall of China, thousands of years before Robert Frost's prophetic words, neighbours have struggled with the age-old problem of constructing fences.

Just where to put it, is answered by the Romans and the Chinese. You place it along the boundary on your side of the property line. This way, you own it, and whether you are fencing other people out or your people in, this location makes the most sense.

You have the legal right to construct a fence right on the property line, but if you do, you run the risk that it will be jointly owned with the neighbour. If the neighbour is going to own it, then the neighbour should pay for it.

The Line Fences Act provides something of a solution. It is an Ontario statute that governs the erection of fences along boundary lines. Both property owners have the right to erect a fence entirely on their own property and both property owners have the right to construct a fence along the boundary line. One owner may wish one kind of fence and the other owner may want a different kind or no fence at all.

The Act provides a mechanism to resolve disputes. The solution will be resolved usually as follows:

- 1) one party will be given authority to construct the fence,
- 2) the fence will be located along the boundary of the two properties,
- 3) the fence will be jointly owned,
- 4) each owner will have to pay a certain percentage of the cost (not necessarily 50%), and
- 5) both owners will have to share in the maintenance.

So, let's assume that you wish to have a 6 foot wood fence basically to protect your privacy and to keep your neighbour's dog out of your backyard. The neighbour agrees to a fence, but just wishes to have a 3 foot chain link fence. What do you do? The fence viewers appointed under the Act are

likely to conclude that your neighbour need only contribute one half the cost of the cheaper fence. If you go along with this, your neighbour will pay about one fifth of the cost and own one half of the fence.

In this case, it makes much more sense to follow Hadrian's plan. Pay the entire cost, construct it yourself, own it and maintain it. In order to preserve your rights, the fence needs to be on your own property.

The next step is to determine the potential legal issues associated with the construction of the fence. Are you taking down an existing fence? Do you own that fence? What system of title registration governs your property? This is very, very important and the legal consequences can be different depending upon which system applies.

In Ontario, there are two systems the Land Titles system and the Registry system. Under the newer Land Titles system, if a fence is incorrectly placed over your property line by your neighbour, you are legally entitled to have the neighbour remove the fence. This is not so, with the Registry system. Rights can be acquired after long term usage. If for example, the neighbour's fence is placed one foot over the property line, and you do nothing to object or grant permission, then after a period of 10 years you will no longer have the legal right to have it moved and the neighbour has the right to obtain a Court Order confirming his ownership of that one foot strip of property.

It is therefore extremely important to know which system applies.

Another issue that we'll have consider are the zoning and building by-laws.

Basically, in most municipalities a homeowner is entitled to construct a fence enclosing the rear yard provided the fence does not exceed 6'6" in height or in the front yard provided it does not exceed 3'3" in height. The height is measured from the ground to the highest point of the fence. This includes all decorative trim.

In some cases, this maximum height may be exceeded as in the case of a noise attenuation barrier or in the case of a school or park provided the fence is chain link.

There are also site triangles to consider. If you have a corner lot, you must not construct a fence that would interfere with the visibility of traffic. In this

case, you have to stay back from the corner by 20 feet. There is an additional concern with corner lots and the definition of “front yard”. Certain property boundaries may be the front yard for one owner but the rear yard for the adjacent owner. So, can you build a 6’6” fence? The answer is yes if it’s your rear yard and no if it’s your front yard. The result is that along one boundary line one owner could build a 3’3” fence while the other could go to 6’6”. If you wish to have a fence of this height you may have to approach the other homeowner for permission.

Generally, the by-law does not concern itself with the materials you use. It is very important to contact the municipality to confirm the precise rules outlined in its by-law.

There are some further restrictions in the form of registered restrictions or covenants registered against the title to your property. Often they will be registered by the developer and continue in force for 20 years and in some cases up to 40 years. These rules are specific to your subdivision and generally they deal with the nature, type, materials and the aesthetic appearance of the fence. These rules can be enforced through the Courts by the developer, the builder or any of the other homeowners.

In some neighbourhoods, only wood fences are allowed to ensure privacy, in others only chain link or other open fencing is allowed so as not to restrict visibility. These are the rules that are often overlooked by the homeowner at the time of fence construction. You may not worry about it, your neighbour may not worry about it and the purchaser of your property may prefer it; however, the mortgage company financing the purchase may require that it be demolished. The new purchaser will want to be compensated for the cost of construction of a new fence that is in compliance with the covenants.

In this case, do your homework ahead of time. Next week, we’ll look at surveys and fence construction.

We determined that the best place to locate a fence is on your own side of the property line. For disputes with neighbours, you may need to resort to the Fence Viewers under the Line Fences Act. They will be appointed by the Clerk of the City (or municipality), if required.

The next step to consider is the materials you wish to use and any design or height restrictions imposed by the City under the zoning and building by-laws or the property developer by restrictive covenants.

However, now you come to the hard part. Just where is your property line? And, don't forget about the underground services, water, hydro, sewers, gas lines, telephone lines and cable TV. If you call them, they will be pleased to attend at your premises and mark out the approximate location with spray paint. Since this will last only 10 to 14 days, you should be ready to build.

Let's assume you wish to construct a 6 foot wood fence. The standard posts are 4 inches by 4 inches and your boundary line is thinner than the narrowest thread. If you build it on the property line, it will encroach over your neighbour's property by 2 inches. If you are both building the fence, then this is fine, but if it's your project, move it back just inside the line.

How do you find out the exact location? The answer is, that you don't. You will have to call a surveyor to do this. The next best solution is to see if one of the utility companies can show you where it is, and mark the location for you.

The homemade solution is to obtain some markers from the survey of your property and the adjoining property. The corners of both buildings measured from the foundation should be shown as setbacks from the property line. This will provide you with four starting points. Take four strings and locate them at each of these corners. The strings should be long enough to make reach across the boundary line. Once you have four strings all ready to rotate, you will need to measure the setback distance as shown on the survey and mark that distance on the string with some tape. Now, you will be able to line up all four pieces of tape into a straight line. It's not a very good arrangement, but it works reasonably well over distances of less than 100 feet. Be cautious, because you may be out less than an inch at one end and find that you are out over six inches at the other.

The best advice here, is call a surveyor! Even better, if you are in a new area, organize a fence building weekend with your neighbours and share the cost of a surveyor. Local fence companies will be happy to dig the holes and place the posts, making fence building an enjoyable community activity for your neighbourhood.

And, please remember “good fences make good neighbours”.

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