

Section 20 of Line Fences Act key for farmers

Ontario's Line Fences Act contains details of vital importance to land owners, particularly farmers.

The Ontario Federation of Agriculture (OFA) keeps a close eye on the act, monitoring compliance and any efforts to modify the details it contains.

A recent article in *Municipal World*, a magazine for and about different aspects of municipal government, suggests "Section 20 of Ontario's Line Fences Act needs to change."

That's the section that sets out the responsibilities for fencing former railway rights-of-way in Ontario.

Wording in Section 20 states: "If a former railway right-of-way is acquired by a non-abutting landowner, then that person, Crown agency or municipality, as well as whoever acquires it from them, is solely responsible for constructing, keeping up and repairing the fences along the former railway right-of-way."

Recent court cases have upheld Section 20, making municipalities still 100 per cent responsible for these fences. This probably accounts for the *Municipal World* article suggesting "Section 20 of Ontario's Line Fences Act needs to change."

The OFA, working in concert with local interests, played a role in gaining the court decision that upholds the act as it's written. For Ontario farmers, that section of the act is critical, especially for those who own land that abuts these abandoned railway rights-of-way. These strips of property are ideal for trails used by the general public seeking recreational areas.

On a regular basis, the use of adjoining farmlands is assumed to be included in the trails, and without constantly maintained fences, there's nothing to discourage such use. Farmers aren't interested in playing the role of the cordial host when it means damage to crops and livestock escapes. They want a secure fence between their property and the trails, and they need to know it's not their responsibility to build such fences.

In October 2002, a Divisional Court ruling made it clear when it stated the wording of Section 20 of the act is "precise and unambiguous" and that "the municipality is liable for the entire cost of fencing when fencing is sought by the abutting landowners."

The author of the *Municipal World* article, Michael Graves, is director of corporate services and clerk for the Town of Tillsonburg. Tillsonburg along with Bayham Township became owners of an abandoned railway right-of-way in the early 1990s. When the abutting landowners requested fences along the proposed recreational trail, the municipalities refused to pay, leading to the landowners taking the issue to the courts for resolution.

The OFA worked with the farm property owners to defend their interests at that time, and continues its resolve to see Section 20 of the Line Fences Act remain unchanged and enforced. It protects a basic right of farmers to have security for their properties, and leaves it to the "non-abutting property owner who acquired the right-of-way" to provide that fencing.

OFA Paul Mistele Commentary

The *Municipal World* article suggests abutting property owners — usually farmers — should be expected to pay a share of the cost of such fencing when it's requested.

From a purely economic standpoint, farmers gain nothing but security for their property. An investment in fencing to separate abandoned railway rights-of-way from their farmland yields absolutely no economic return.

The OFA supports Section 20 of the Line Fences Act and will continue all necessary efforts to keep it enforced across the province and unchanged.

Paul Mistele is a member of the Ontario Federation of Agriculture executive committee.

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