

## **Procedural Guide for Using Division Fence By-law 2020-xx**

### **STEP 1 – Attempt to Reach an Agreement**

Attempt to reach an agreement with the adjoining owner regarding the type and cost sharing of a division fence. It is suggested that a serious attempt is made by contacting your neighbor in person more than once prior to proceeding to Step 2.

### **STEP 2 – No Agreement, Proceed as Per Section 3.2 of the By-law**

Begin by reading the Town of Caledon Division Fence By-law 2020-xx carefully to ensure that you fully understand the content. You do not need a lawyer to proceed further but you may choose to use a lawyer to ensure compliance with the By-law.

Send a notification package by registered mail to the adjoining owner. It is suggested that you also personally deliver a copy of the notification package to the adjoining owner on the date the registered mail version is sent to ensure it is received. Each Notification Package must contain the following minimum information:

- (1) a letter (a sample version is attached to this Procedure) which clearly sets out whether your intent is to construct, replace, repair or maintain (please see the specific definitions for each within the By-law) a division fence and which includes the following sentences exactly:
  - (a) “As the adjoining owner, you may obtain and provide me with 3 additional quotes to be considered for the proposed work not later than 20 business days from the date on which this notification package was mailed.”;
  - (b) “The work with respect to the division fence will commence after 20 business days have passed starting from the day following the date of mailing this notification package and, in accordance with the Town of Caledon Division Fence By-law 2020-xx, I may seek a contributory payment for the work to the division fence from you, the adjoining owner.”;
- (2) copies of 3 separate written quotes for the work to be done in respect of the division fence;
- (3) a complete copy of the Town’s Division Fence By-law 2020-xx; and
- (4) a copy of a land survey that shows the property line which separates the adjoining parcels of land and the proposed or existing location of the division fence.

If the adjoining owner does not make any contact or you continue to be unable to agree or reach an agreement with them, you may proceed to do the work regarding the division fence but only **after 20 business days have passed starting from the day following the date of mailing the notification package by registered mail**. You are able to choose the quote that will be used but prior to proceeding you should carefully review the By-law to understand how cost will be apportioned between you and the adjoining owner. Cost apportionment is set out in Part 4 of the Division Fence By-law and explained below. You will have to pay the person who completes the work on the division fence and then proceed to Step 3.

## Explanation of Cost Apportionment

If within the 20 day period the adjoining owner did not submit any quotes to you in response to your notification package, then they have not indicated that they are willing to pay for any portion of the fence. Therefore, their cost will be minimal as they are only required to pay whichever is the lowest amount between 50% of the lowest cost quote you provided or 50% of the cost of a basic fence. The By-law sets out a definition for a basic fence to provide a minimum standard of a division fence. A basic fence is a simple chain link fence in residential settings or can be a post and wire fence in certain agricultural settings. Please see the definitions of basic fence, residential fence and agricultural fence in the By-law as a quote for a basic fence must be based on the exact specifications set out. If the cost of a basic fence is unknown or in dispute then each party has the option of obtaining a quote for that type of fence.

If the adjoining owner does submit quotes as part of the process, either within the initial 20 day period or by obtaining a basic fence quote after the fact through Section 4.2, then they have indicated what they would be willing to pay with respect to a division fence. As both neighbours have had their say over the cost of the fence, the adjoining owner will be required to pay 50% of the lowest cost quote considering all those exchanged. However, to ensure that the quotes they provide are adequate to meet the minimum standard of a division fence, the adjoining owner cannot pay less than 50% of the cost of a basic fence. Again, if the cost of a basic fence is unknown or in dispute, both parties may choose to obtain a quote for a basic fence and the lowest cost quote will be the one used as the benchmark.

Remember that if you and your neighbour can reach an agreement at any time, that can take precedence over the By-law process to ensure an amicable resolution.

### **STEP 3 – Recovering the Cost of Work for the Division Fence**

Where the adjoining owner fails to pay their portion of money for the work regarding the division fence, within 90 days of such work being completed you must provide the adjoining owner with another notice letter by registered mail and, if possible, personal delivery. The purpose of the letter (a sample version is attached to this Procedure) is to inform the adjoining owner that they are required to comply with Town of Caledon Division Fence By-law 2020-xx by paying their portion of cost related to the division fence.

This notice should set out the dollar amount that the adjoining owner is required to pay, include a copy of the quote for which they are responsible to pay 50% and identify the Section of the By-law under Part 4 on which this is based. The other quotes exchanged may also be provided to demonstrate that the quote being used to determine payment was the lowest.

Finally, the letter should specify that if the adjoining owner does not comply with the By-law by paying their portion within 30 calendar days after the date the letter is sent, the cost may be recovered from the defaulting person by taking a proceeding before the Ontario Court of Justice for an Order in accordance with Section 161 of the *Provincial Offences Act*. If payment is received, the matter is at an end. If payment is not received, you may proceed to Step 4.

### **STEP 4 – Initiating a Prosecution to Recover Division Fence Costs**

If you are not familiar with the prosecution process, court and the rules of evidence then you may wish to consider retaining the services of a lawyer to assist you. If Step 3 was unsuccessful and the adjoining owner did not pay their required share, you may initiate a proceeding. You will need to complete a statement under oath attesting to the existence of facts that would justify the Order you are seeking. Call the Provincial Offences Court Office (6311 Old Church Road, Caledon) at 905-584-2273 to determine the availability of a Justice of the Peace. The statement should

conclude with a request that the court make an Order that your neighbour pay his/her share of the cost related to the division fence. The statement will need to be served on your neighbour with a Summons to appear in court and you may need to hire a process server to complete this. Proceed to Step 5.

The Ontario Court of Justice provides a [guide that sets out basic information about the court process](#).

### **STEP 5 – Court Date**

On the court date, your neighbour (defaulting person) will be asked if they wish to dispute the making of the Order. If they do, a trial will be held. You will have to prove that you correctly followed the procedural steps in the By-law. Therefore, you may wish to bring evidence which may include but is not limited to:

- Certified copy of the Division Fence By-law 2020-xx which may be obtained from the Town's Legislative Services Division located at 6311 Old Church Road;
- Complete copy of your initial notification package and the additional notification letter provided under Step 3;
- The quotes exchanged during the process;
- A copy of this Procedural Guide;
- Photographs detailing completion of the work on the division fence and documentation of the dates on which the work began and when you paid for the work in full.

If the Order is granted, your neighbor (defaulting person) will be given a certain amount of time to pay. When payment is made, the matter is at an end. If payment is not made, you may proceed to Step 6.

### **STEP 6 – Enforcing your Court Order if no Payment**

In the rare instance when your neighbour continues to default on their obligation under the By-law and subsequently defaults in payment pursuant to a court Order, you can enforce the Order by, for example, garnisheeing wages, or instructing a bailiff to seize assets. To do this, you will need to file a "Certificate of Default" through small claims court located at 7755 Hurontario Street, Brampton. There are small fees involved when embarking on enforcement through the Small Claims Court.

## STEP 2 - Sample Letter

[Enter the date the notification package is sent by registered mail]

[Enter name of adjoining owner]

[Street Address]

[City, Province, Postal]

**RE: NOTICE OF INTENT TO [enter construct, replace, repair or maintain] A DIVISION FENCE**

**OWNER:** [enter your name if you are the person seeking work regarding the division fence]

**ADJOINING OWNER:** [enter the full name of the owner of the land beside yours who will share the division fence]

Dear [enter the full name of the adjoining owner],

As the owner of the property located at [enter address of owner], I am sending this letter and notification package to formally advise you of my intent to [enter construct, replace, repair or maintain] a division fence on the property line which separates our adjoining parcels of land.

Despite our previous conversations about [enter constructing, replacing, repairing or maintaining] the division fence, we are not currently in agreement and have not previously reached agreement about the sharing of cost or labour. Therefore, I intend to proceed with the [enter construction, replacement, repair or maintenance] of the division fence in accordance with the Town of Caledon Division Fence By-law 2020-xx, a copy of which is enclosed for your information.

Further, enclosed in this notification package you will find a copy of a land survey that shows the property line which separates our land and the [enter proposed, existing] location of the division fence on it. The division fence will be [enter a description of the work to be done such as specific repairs or the type, height and length of the proposed division fence]. Copies of 3 separate written quotes are also included for the work to be done with respect to the division fence. As the adjoining owner, you may obtain and provide me with 3 additional quotes to be considered for the proposed work not later than 20 business days from the date on which this notification package was mailed.

The work with respect to the division fence will commence after 20 business days have passed starting from the day following the date of mailing this notification package and, in accordance with the Town of Caledon Division Fence By-law 2020-xx, I may seek a contributory payment for the work to the division fence from you, the adjoining owner.

Should you wish, I would be pleased to discuss all of the quotes with you prior to making a decision as I would prefer to reach an agreement amicably.

Sincerely,

[enter signature of owner]

[enter name of owner]

### **STEP 3 - Sample Letter**

[Enter the date the letter is sent]

[Enter name of adjoining owner]

[Street Address]

[City, Province, Postal]

**RE: COMPLIANCE WITH TOWN OF CALEDON DIVISION FENCE BY-LAW 2020-XX**

**OWNER:** [enter your name if you are the person who completed and paid for work on the division fence]

**ADJOINING OWNER:** [enter the full name of the owner of the land beside yours who will share the division fence]

Dear [enter the full name of the adjoining owner],

Further to my Notice of Intent letter dated [enter date of the previous letter], [construction, replacement, repair or maintenance] of the division fence on the property line between our parcels of land was completed on [enter date work was completed]. Town of Caledon Division Fence By-law 2020-xx, a copy of which was previously provided to you, requires in this case that the cost with respect to a division fence be shared between the adjacent property owners.

As the adjoining owner, you are required to comply with Section [enter the applicable Section from Part 4] of the Town of Caledon Division Fence By-law 2020-xx by paying your portion of the cost related to the division fence. Based on the quotes exchanged, you are responsible for \$[enter the exact dollar amount]. Please find enclosed with this letter a copy of the quote for which you must pay 50% in accordance with the By-law. If you do not comply with the By-law by paying your portion no later than 30 calendar days from the date of this letter, being [enter date 30 calendar days after letter date], I may proceed to recover your share of the cost from you by taking a proceeding before the Ontario Court of Justice for an order in accordance with Section 161 of the *Provincial Offences Act*.

Sincerely,

[enter signature of owner]

[enter name of owner]