

Division Fence By-law 2021-41 Procedural Guide



The purpose of the Town's Division Fence By-law is to help residents that wish to build a fence, repair or maintain an existing fence that is considered a shared fence. A shared fence is a fence that is placed on a property line. When neighbours can't reach an agreement on the shared fence, the By-law can be used to complete the work and divide costs fairly.

NOTE – the Town does not get involved in the use of the Division Fence By-law or provide assistance to resolve these neighbourly matters. The By-law and this Procedural Guide is a tool that is available for residents that wish to independently seek payment for work completed on a shared fence.

If you are looking to build a fence, we suggest you consider the following tips below before constructing:

- Read the [Town's Fence By-law 2017-68](#) so you know the Town's rules about fence heights and materials. *(If you have any questions call us at 905.584.2272 x7750)*
- It is suggested that you understand where your property line is when installing a fence. You may have a copy of your property survey (showing property lines) in your home purchase documents. *(If you don't, contact the Land Registry Office at 905.874.4008)*
- Speak to your neighbour and let them know what you are thinking of doing and find out if they are interested in cost sharing.

If your neighbour is in agreement and you are sharing the cost of the fence you should not need to worry about anything else.

If your neighbour is NOT in agreement or is NOT interested in sharing the cost, you have two choices:

1. **Build the fence on your own property (this is where you will need to refer to your survey) and absorb the costs, or**
2. **Read the [Town's Division Fence By-law 2021-14](#) and this Procedure to understand the process to recover some of your costs from your neighbour.**

NOTE – you do not need a lawyer to proceed but you may chose to use one.

STEP 1 – Notify your Neighbour about Fence Work

Prepare and deliver a package to your neighbour in person and by registered mail that includes the following;

- a letter (a sample is available for your use on **Page 4** of this Procedure) which clearly sets out whether your intent is to construct, replace, repair or maintain a division fence (please see the specific definitions within the By-law)
- copies of 3 separate written quotes for the work to be done in respect of the division fence;
- a complete copy of the [Town's Division Fence By-law 2021-14](#); and
- a copy of your property survey that shows the property line which separates your property and your neighbours property.

STEP 2 – 20 Day Waiting Period

Now that you have completed Step 1 – Notifying your Neighbour, you are required to wait at least 20 business days before you do anything. This includes any work on the fence and selecting a quote. This gives your neighbour an opportunity to respond to your letter.

Once the 20 business days has passed, you can select your preferred quote and begin working on your fence.

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 – Notify your Neighbour of Cost Recovery for Fence Work

If your neighbour does not acknowledge your letter or give you payment for their fair portion of the fence, you may proceed to collect their portion of the costs.

Prepare and deliver a Notice Letter to your neighbour in person and by registered mail that includes the following;

- a letter (a sample is available for your use on **Page 5** of this Procedure) to inform the adjoining owner that they are required to comply with the Town's Division Fence By-law 2021-14 by paying their portion of cost related to the fence within 30 calendar days and next steps if they do not pay; and
- copy of the lowest 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.

If payment is received, the matter is considered done. If payment is not received, you may proceed to Step 4.

NOTE: It is important that you fully understand how the Cost Apportionment is intended to work. Please refer to Page 6 for details before moving forward.

STEP 4 – Recovering Costs through Court

NOTE – you do not need a lawyer to proceed but you may chose to use one as this step is a bit more complicated.

If Step 3 was unsuccessful and your neighbour did not pay their share, you can initiate a court proceeding by completing the following:

- Call the Provincial Offences Court Office at 905-584-2273 (located at 6311 Old Church Road in Caledon) to schedule a time to attend the Court Office and complete a ***statement under oath** (see below for further details about what to include in your statement); and
- Once you have completed your statement before a Justice at the Court Office, your neighbour will need to be served by a process server with a Summons to appear in court (the Summons document will be developed and provided to you by the Court Office and will include the date of the first appearance). **You will have to hire a process server as this service is not available through the Town or the Court Office.**

***A statement under Oath** is an attestation of the facts and the steps you took in following the Town's Division Fence By-law for the work on the fence and in recouping the portion of costs from your neighbour. The statement should conclude with a request that the court make an Order that your neighbour pay their share of the cost related to the division fence.

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

STEP 5 – Attending on the Court Date

On the scheduled court date, you are required to appear. At the proceeding, the Justice will ask your neighbour if they wish to dispute the making of the Order. If they do, a trial will be held.

As part of the trial, you will have to prove that you correctly followed the procedural steps in the Town's Division Fence By-law 2021-14. Therefore, you may wish to bring evidence which may include but is not limited to:

- A certified copy of the Division Fence By-law 2021-14. *Contact the Town by phone at 905.584.2272 ext. 2366 at least 5 business days in advance of the court date to obtain a certified copy;*
- A copy of your initial notification package and the additional notification letter provided in Step 1 and Step 3;
- The quotes exchanged during the process;
- A copy of this Procedural Guide;
- Photographs detailing completion of the work done on division fence and documentation of the dates on which the work began and when you paid for the work in full.

At the conclusion of the trial, the Justice will decide whether or not the Order is granted. If the Order is granted, your neighbour will be given a certain amount of time to pay you. When payment is made, the matter is considered done. If payment is not made, you may proceed to Step 6.

STEP 6 – Enforcing your Court Order

If your neighbour does not pay based on the court Order, you can enforce it by 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.

This is the last step in the process.

STEP 1 - Sample Letter

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

[Enter name of adjoining owner]

[Street Address]

[City, Province, Postal Code]

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 2021-14, 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 2021-14, 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 Notice Letter

[Enter the date the letter is sent]

[Enter name of adjoining owner]

[Street Address]

[City, Province, Postal Code]

RE: COMPLIANCE WITH TOWN OF CALEDON DIVISION FENCE BY-LAW 2021-14

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 2021-14, 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 2021-14 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]

Explanation of Cost Apportionment

If within the 20 business day period your neighbour does not submit any quotes to you, 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 or can be a post and wire fence in certain agricultural properties. Please see the definitions of basic fence, chain link fence 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 your neighbour does submit quotes as part of the process, then they have indicated what they would be willing to pay with respect to a division fence. As both you and your neighbour have had a say over the cost of the fence, your neighbour will be required to pay 50% of the lowest cost quote exchanged. However, to ensure that the quotes they provide are adequate, your neighbour 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.

Basic Fence means a chain link fence or, where involving a property that is zoned agricultural, pursuant to the applicable Town Zoning By-law, and actively used for agricultural purposes a basic fence may include an agricultural fence.