



Real Estate News

Tony Smits

Good Fences Make Good Neighbours

The *Line Fences Act* is one of Ontario's oldest pieces of legislation that provides a method of arbitrating fencing disputes between property owners. The Act applies where one owner wants to construct, repair or maintain a fence on a property boundary line, but is unable to reach agreement with the other owner on the type of fence to be constructed, the costs of the fence, or both of these issues. The Act does not deal with disputes about fences that are not on a boundary line and does not apply if a municipality has passed its own by-law addressing these circumstances under the *Municipal Act, 2001*.

The City of Hamilton has passed its own fence by-laws that apply within the urban boundary of the City. In fact, the City of Hamilton has a number of by-laws regarding fences. These are Hamilton's Fence By-Law 10-142 and By-Law 08-108 respecting the apportioning of costs of division fences in the City of Hamilton.

I typically advise clients that one of the most important factors when considering the construction of a boundary fence is to consult with their neighbour regarding the location of the fence, type of fence and how they plan to pay for it (or share the costs). This will save time, money, frustration and any potential legal issues down the road.

Ideally, neighbours will reach an agreement regarding the construction of a fence. If an agreement cannot be reached, By-Law 08-108 provides that a division fence (or fence located directly on the boundary line) may be constructed or replaced and the cost of a 4 foot high chain link fence must be split 50/50 between neighbours. Interestingly, if the property abuts City property, the City offers a fence cost sharing program where the City will pay for half the cost of a 4 foot high chain link fence. If a client wishes to construct a division fence other than the standard chain link fence, both property owners must come to an agreement regarding how to split the costs.

If neighbours cannot reach an agreement regarding the construction of a division fence, they can proceed with constructing a fence on their own property in accordance with the pro-

visions of By-Law 10-142. If clients are unsure where the property boundary is located, obtain a survey. This is not a case where it is better to ask for forgiveness than permission. If clients are concerned about eventually losing a small portion of their property as a result of an adverse possession claim, consider registering an agreement on title to both properties indicating where the fence is located relative to the property boundary.

After an agreement has been reached regarding the placement of the fence, type of fence and how costs will be shared or one owner has decided to construct a fence on their own property, I recommend that they call to check where any utilities may be located and ensure they are not building on any easements that may require access for regular maintenance. Also, if the property is in a relatively new subdivision it is a good idea to review any restrictive covenants pertaining to fences that may affect the property and obtain the written consent from the vendor to construct a fence, if this was a requirement under the *Agreement of Purchase and Sale*. These items are especially important when constructing a new fence.

Find a qualified contractor and obtain a number of quotes. The *Consumer Protection Act* provides that if a written estimate is included in the con-

Reliable business valuation reports for:



- Family law
- Commercial disputes
- Shareholder disputes
- Business interruption
- Tax/Estate
- Sale of a business
- Succession
- Reorganizations

KEYSTONE
Business Valuations

Steve Skrlac
B.A. (Econ), MBA, CFA, CBV

Contact Steve Skrlac at:
905-592-1525 steve@keystonebv.ca

tract, the final price cannot be 10% more than the estimate, unless a revision to the contract has been agreed and signed. A building permit is not required to construct a fence.

By-Law 10-142 further provides that any fences in existence prior to June 9, 2010, are deemed to comply with the By-law for as long as the fence continues to be the same height and length and width and comprised of the same material.

According to By-Law 10-142, fences constructed after June 9, 2010, in residential areas are generally restricted to 2 metres (6 foot, 6 inches) in height. Fences in industrial or rural areas are generally limited to 3 metres in height. Fences in front yards are generally limited to .9 metres in height. Corner lots also have specific requirements due to visibility concerns.

Contravention of the by-laws can result in the City or its contractors remediating the non-compliant fence construction at the property-owner's expense, which is then added to the tax rolls for the property. By-Law 10-142 also provides that every person who contravenes the By-Law or fails to comply with an order is, upon conviction, guilty of an offence and is liable to a fine of not more than \$10,000.00 on a first conviction and a fine of not more than \$25,000.00 on any subsequent conviction.

If you have questions or concerns regarding fence By-Laws, constructing a fence or the height or condition of a fence, contact the City of Hamilton. ■

Tony Smits is a Partner at Smits Groves LLP located in Waterdown, Ontario.

He can be reached at:

Tel: 289-895-8162

E-mail: tony@smitsgroveslaw.com

Website www.smitsgroveslaw.com




Helping you through mediation to achieve mutually positive agreements. **905.522.7068**



Trusted

Trusted by major insurers and plaintiffs for over thirty years to handle their litigation.



Knowledgeable

Co-Chair of Hamilton's two main personal injury conferences for over fourteen years.



Responsive

I fully engage in the mediation process to keep discussion flowing until we reach a mutually beneficial settlement.



www.sullivanmediations.com