

**City of Mississauga
Line (Division) Fence By-Law 0075-2004
Procedure**

ATTEMPT TO REACH AN AGREEMENT: (Section 6)

STEP 1: NO AGREEMENT - PROCEED AS PER BY-LAW: (Section 7)

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 **Notice of Intent** (letter) by registered mail. (**See Sample Letter #1**) We suggest you also deliver a copy of the Notice to ensure the notice is received by the adjacent owner at least **14 days prior to commencing work or signing a contract**. The Notice of Intent must contain the following minimum information:

- (i) a copy of three (3) written quotes for the actual cost or basic cost for the fencing work to be undertaken;
- (ii) a paragraph stating that “the construction or replacement of the division fence will commence fourteen (14) days after the date of mailing of this Notice of Intent and the owner may seek a contributory payment for the work to the division fence from the adjoining owner in accordance with By-law 0075-2004”.
- (iii) a further paragraph stating that “the adjoining owner may obtain three (3) additional quotes for presentation to the owner not later than ten (10) business days from the date of mailing of the Notice of Intent”; and
- (iv) a complete copy of By-law 0075-2004 (attach to the letter).

If the adjacent owner makes no contact and does not make payment, you may proceed to build the fence upon the expiration of the fourteen (14) day period. You will have to pay the person who builds the fence and then proceed to **STEP 2**.

Note: When the cost of construction or replacement is in dispute, the cost of a division fence shall be apportioned as follows:

(a) the adjoining owner (person to whom the Notice of Intent is sent) shall pay fifty percent (50%) of the basic cost* or fifty percent (50%) of the actual cost, whichever is the lesser, having considered all the fencing quotes exchanged, and

(b) the owner shall pay the balance of the actual cost.

*Basic cost means the total cost of construction, replacement, maintenance or repair, as applicable, of a four (4) foot high, 1-1/2 mesh, steel chain link fence.

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STEP 2: RECOVERING THE COSTS OF BUILDING THE FENCE:
(Section 15)

If the adjacent owner fails to pay **within 90 days of completion of the fence**, you must serve him or her with another notice (letter) by registered mail and personal delivery, requiring the adjacent owner to comply with the by-law. **(See Sample Letter #2)** This notice should again set out the provisions of the by-law, a breakdown of the costs of the fence (including copies of invoices/estimates/ quotes) and conclude with a **request for payment within 30 days of receipt of the notice.**

The notice must also state that if the payment is not received within 30 days, you may recover the proportionate share of the cost of the work from the defaulting person. If payment is received, the matter is at an end. If payment is not received, you may proceed to **STEP 3.**

**STEP 3: INITIATING A PROSECUTION TO RECOVER
PROPORTIONATE SHARE OF COST OF FENCE**

If step 3 is unsuccessful, you may proceed to initiate a prosecution to recover the proportionate share of the cost of the fence. **If you are not familiar with the court process and the rules of evidence then strong consideration should be given to retaining the services of a Lawyer to assist you in proceeding with the issuance and prosecution of a charge under the By-Law.**

Steps

1. **Compile evidence** to support your charge that payment has not been received from the adjoining landowner (defendant). You will have to prove that you correctly followed the procedural steps in the by-law. Examples of evidence may include, but are not limited to:
 - Certified copy of Division Fence By-Law 0075-2004 (may be obtained from the City Clerk's Department located on the 3rd floor of the Civic Centre - a small fee will be charged.)
 - Copies of Notice of Intent (letter #1) and Notice of Completion (letter #2)
 - Quotes obtained for construction of the fence
 - Photographs detailing completion of work
 - Certified Tax Assessment Roll (to prove ownership of property)
2. Attend at City of Mississauga Provincial Offences Court located at 950 Burnhamthorpe Road Circle, Mississauga, Ontario and obtain an **Information** (charging document) and **Summons** package.

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3. Prepare **Information** and **Summons** setting out information such as:
- defendant's (adjoining property owner's) name
 - the offence location (address) and offence date
 - the By-Law number, including the specific section contravened, and a description of the contravention under the by-law
 - reference to the penalty section of the By-Law (section 15)
 - the Court Room and Court location the summons is returnable to for the first court appearance by the Informant (you) and the Defendant (adjoining property owner)

The charge is to be made returnable to:

Ontario Provincial Court
Court M1 at 1:30
Mississauga, Ontario
On a Tuesday

4. Attend A. Grenville and William Davis Courthouse, 7755 Hurontario Street, Brampton, Ontario and appear before a Justice of the Peace to swear to the contents set out in the **Information/Summons**.
5. Return the **Summons** signed by the Justice of the Peace to Ontario Provincial Court Administration Office. They will arrange for Peel Regional Police to serve the summons on the defendant as service of the summons must be done by a Provincial Offences Officer.
6. Attend Court on the date and time noted on the summons (the first court appearance date). You and the defendant (adjoining property owner) will be required to address the Justice of the Peace presiding in court who will make inquiries as to how the defendant intends to proceed.

7. **If the defendant (adjoining property owner) enters a guilty plea**

You will be required to provide the Court with certain facts of the by-law contravention and submissions as to the penalty (fine amount) you wish the Court to impose.

If the defendant (adjoining property owner) intends to plead not guilty

The court will schedule a Date, Time and Court Room for a **Pre-Trial** to be heard. **At the Pre-Trial**, a Justice of the Peace will make inquiries with both parties (the informant and defendant) to determine:

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- the amount of time required to be set aside for the trial.
- the number of witnesses anticipated to testify.
- length of time required for the trial.
- agreed facts and any issues regarding **disclosure** (information to be provided by the informant to the defendant upon request, such as: copies of all relevant evidence on which the informant intends to rely such as witness statements, photographs, documentary evidence , etc.). The Justice of the Peace will then set a Trial date, Time and Court Room for the trial to be heard.

8. **On the Trial Date,**

- attend court with your witnesses (witnesses must attend in person as their evidence cannot be introduced via a signed statement) and all other evidence.
- present your evidence and call your witnesses to testify.
- the defendant has the right to question any witness whom testifies on your behalf.
- after you have presented your evidence, the defendant has the opportunity to present his evidence and witnesses but is not required to do so.

9. **After hearing all of the evidence,** the Justice of the Peace will:

- ask both the Informant and Defendant for submissions (this is an opportunity for both parties to summarize their position and reasons why a conviction should or should not be entered).

10. **After hearing all of the evidence and submissions (if any),** the Justice of the Peace will:

- render a ruling, either entering a conviction against the defendant, or dismissing the charge.

11. **If a conviction is entered** the court will ask the Informant and then the Defendant for submissions as to the penalty they wish the Court to impose.

Please Note:

If there is a dispute with respect to the precise location of a boundary line between properties, this must be resolved prior to proceeding with fence construction. Such disputes are civil matters and must be settled between the two parties.

The City of Mississauga has no authority to deal with boundary line disputes.