



Investigations and Compliance – Policy and Procedures

Policy Title: By-Laws Pertaining to Investigations of Members

Authority:	Effective Date:	Revised date:	Policy Number:
Issued by Board of Directors of Ontario One Call	February 16, 2017		
Subject: Attachment to accompany any notice that could result in a hearing or appeals process			
Schedule 2 to By-Law No. 2, Part II, Enforcement which is incorporated into a regulation under the <i>Ontario Underground Infrastructure Notification System Act, 2012</i>		Applies to: Members of Ontario One Call	

**Policy:** To provide notice and information about by-laws in respect of investigations of members under By-Law No. 2.

**Purpose:** To ensure clarity of rules and process surrounding an investigation by the Manager of Investigations and Compliance of Ontario One Call (“**Manager of IC**”).

**Scope:** All members of Ontario One Call.

**Procedure:** Include the attachment, “By-Laws Pertaining to Investigations of Members”, with any formal notice sent to any Member who is subject to the compliance process.

**Reason:** To ensure each member is fully aware of these rules in advance of any hearing or appeal process.

---

**ATTACHMENT**

By-Laws Pertaining to Investigations of Members

**Schedule 2  
To By-Law No. 2 of  
ONTARIO ONE CALL**

**PART II**

**Sections 6 to 19 under “Investigating a Matter”**

**Investigating a Matter**

6. Before investigating a matter that has entered the complaints and compliance process, the Manager of IC will notify the Member in writing of the matter and give the Member fifteen (15) Business Days to respond to the matter in writing. Notification of the matter does not require notification of the evidence relating to the matter.
7. The Manager of IC may investigate a matter without appointing an Investigator under this Schedule 2 but must follow the best practices and processes established for Investigators under the Corporation’s policies.
8. After considering a matter that has entered the complaints and compliance process and any response in writing from the Member, the Manager of IC may do one or more of the following:
  - (a) take no action, if justifiable and good reasons exist not to take such action, but providing written reasons for taking no action;
  - (b) make written recommendations to the Member;
  - (c) require the Member to complete successfully educational or other measures, including changing the Member’s internal processes as specified by the Manager of IC at the Member’s expense;
  - (d) advise, caution or warn the Member in writing;
  - (e) require the Member to appear before the Manager of IC or a person designated by the Manager of IC, at a time and place specified by them, to be cautioned in person;
  - (f) refer the matter to another body that could more appropriately deal with the matter which could include the Technical Standards and Safety Authority (TSSA), the Electrical Safety Authority (ESA) or the Ministry of Labour, or their successors, for appropriate action;
  - (g) refer the matter to the Compliance Committee for a hearing;

- (h) take such action that the Manager of IC considers appropriate that is not inconsistent with the Act or the by-laws of the Corporation; or
- (i) engage a respected professional mediator to attempt to resolve a compliance matter involving a Member.

Failure to attend at a meeting before the Manager of IC, when directed to do so under Section 8, will result in a breach of this Schedule 2. The Manager of IC will refer such breach, together with the original matter, to the Compliance Committee for a hearing.

- 9. A Member must comply with a decision or action taken by the Manager of IC under the previous Section. Where a Member disputes the appropriateness of a requirement under clause 8 (c) or 8 (h), the Member must file with the Manager of IC a written notice of dispute within fifteen (15) Business Days of the requirement being made, and the Manager of IC must refer the matter to the Compliance Committee for a hearing. In a referral under this Section, if the Compliance Committee finds that the Member has not breached a term of membership set out in Schedule 2 or the proposed requirement under clause 8 (c) or 8(h) was unwarranted, it may make an order requiring the Corporation to pay all or part of the Member's legal costs.
- 10. Other than for a decision made under clauses 8(f) and (g), the Manager of IC will deliver a copy of the written reasons for the Manager of IC's decision to the Member, any complainant and any other person whom the Manager of IC believes has a legitimate interest in them.

### **Compliance**

- 11. The current Terms of Reference for the Compliance Committee are attached as Annex 1 to this Schedule for information.
- 12. The Board will not participate in any investigation or compliance review under this Schedule, except in relation to the participation of directors on the Appeals Committee.
- 13. The Compliance Committee will hear matters referred to it by the Manager of IC.
- 14. The chair of the Compliance Committee or the person's designate will appoint a panel of a minimum of three members of the Compliance Committee to hear each matter referred to the Compliance Committee. Three members of the Compliance Committee constitute a quorum and one person on the Committee must be an independent representative of the Excavator's community and one person from the same subcategory as the Member who is the subject of the hearing.
- 15. The Manager of IC and the Member will be parties at the Compliance hearing.
- 16. No evidence is admissible at the hearing unless, in the case of the Manager of IC, at least thirty (30) calendar days and, in the case of the other party or parties, at least fifteen (15) calendar days before the commencement of the hearing, the party tendering the evidence has given such evidence to every other party:
  - (a) in the case of written or documentary evidence, a copy of the evidence and, if requested, an opportunity to examine the original evidence;

- (b) in the case of evidence of a witness, the identity of the witness and a statement of the anticipated evidence of that witness;
- (c) in the case of evidence of an expert, the identity of the expert and a copy of the expert's written report containing the substance of the anticipated evidence of the expert; and
- (d) an opportunity to examine any real evidence or thing that will be tendered as evidence at the hearing.

The Compliance Committee may, in its discretion, allow the introduction of evidence that is inadmissible under this Schedule 2 and may make the directions it considers necessary to ensure that the other parties are not prejudiced.

17. The Compliance Committee may obtain legal advice from a lawyer independent of the parties.
18. The Corporation will notify the parties to a hearing by serving upon them a Notice of Hearing at least thirty calendar days before the commencement of the hearing. The Corporation will give notice of upcoming hearings including notice of the identity of the Member and the subject matter of the hearing.
19. If the Compliance Committee concludes that the Member has breached a term or condition of membership set out in this Schedule 2, the Compliance Committee may, by order, do one or more of the following:
  - (a) direct the Member to appear, at the person's own expense, before the Compliance Committee or a person designated by the Compliance Committee to be reprimanded;
  - (b) direct that the Member comply with the specified terms or conditions of membership;
  - (c) direct that the Member pay an administrative monetary amount (AMA) not to exceed \$10,000 (see Section 28 below for ranges of financial sanctions), or if appropriate, suspend the requirement to pay such AMA for up to six (6) months from its imposition, and if the Member becomes compliant in the suspended period, cancel the AMA, if appropriate;
  - (d) direct that the Member be placed under probation for up to two years; while under probation the Member will be required, as requested by the Corporation, to show what they are doing to become compliant and, in addition, if an AMA was imposed on the Member for a breach and the Member either commits another breach or fails to become compliant in respect of a prior breach, the AMA for any subsequent breach will be increased to the next AMA level (up to the maximum of \$10,000); and/or
  - (e) suspend certain of the Member's rights in the Corporation for a stated period, during which period of suspension, the Member will not be permitted to have its own representatives stand for nomination to the Board or serve on any committee of the Board.
20. A Member must comply with a direction or order made under the previous Section.

21. If a Member is found to have breached a term or condition of membership set out in this Schedule 2 during the period of probation (a "second finding"), the Member will be deemed to have breached probation contrary to this Schedule 2. The Compliance Committee dealing with a second finding will make an order or orders relating to both the second finding and to the breach of probation and the Compliance Committee will have all of the powers under this Schedule to deal with the breach of probation including the powers under Section 19, including the imposition of a further AMA or probation.
22. Where the Compliance Committee is of the opinion that the referral to Compliance was unwarranted, it may make an order requiring the Corporation to pay all or part of the Member's legal costs.
23. Where the Compliance Committee concludes that the Member has breached a term or condition of membership set out in this Schedule 2, the Compliance Committee will make an order requiring the Member to pay such costs and expenses incurred investigating, prosecuting and hearing the matter (supported by detailed records and documentation) as the Compliance Committee considers appropriate, unless the Compliance Committee is of the opinion that such an order is not warranted.
24. Where a Member agrees or is ordered by the Compliance Committee to pay all or part of the costs and expenses incurred, the Member will pay them within thirty (30) calendar days of the order, unless the Manager of IC agrees to a longer payment schedule.
25. The Compliance Committee must give full and complete written reasons for its decisions.
26. The IC Compliance Coordinator must deliver a copy of the written decision and reasons of the Compliance Committee to the Member, the Manager of IC, any complainant and any other person that the Compliance Committee believes has a legitimate interest in them within thirty calendar days of each hearing.
27. The Manager of IC must prepare a summary of every decision of the Compliance Committee. The summary will identify the Member if the Compliance Committee found that a contravention had occurred. A finding against a Member that a contravention occurred and the decision made by the Compliance Committee is public information.

#### **Administrative Monetary Amounts (AMA)**

28. In exercising its power under Section 19(c) of Part II of this Schedule 2 to impose an AMA on a Member, the Compliance Committee will use the following criteria in determining the amount of the AMA. The criteria will also include the nature and severity of the violation, the Member's past history of non-compliance, whether the non-compliance was inadvertent, intentional or caused by negligence or recklessness and if there was any economic gain to the Member.

In respect of Municipalities which under the Act are not required to become Members until June 19, 2014, the Corporation will not exercise its power to impose AMAs on any municipal Member until after June 19, 2015 thereby giving municipal Members a one year grace period.

For the purposes of this Section, the Compliance Committee must determine the amount of an AMA for a non-compliance issue in accordance with the following rules:

- (a) The Compliance Committee shall determine whether, in its opinion, the contravention had a major, moderate or minor adverse effect, or the potential to have such an adverse effect, on underground infrastructure, surrounding areas or people.
- (b) The ranges for the AMA are set out below in Column 2 of the Table with the levels set out in Column 1 and further described in Column 3.
- (c) The amount of the AMA for non-compliance is an amount selected by the Compliance Committee from within the range described in Column 2 for each level after considering the following criteria:
  - (i) The extent to which the person who is non-compliant has mitigated the adverse effects of the non-compliance or the potential for the non-compliance to adversely affect underground infrastructure, surrounding areas or people.
  - (ii) Whether the person who is non-compliant has previously contravened any of the terms and conditions set forth in this Schedule 2 and if so, how many times and in what ways.
  - (iii) Whether the person who is non-compliant derived any economic benefit from the non-compliance and, if so, how much.

The following are the ranges of AMA that the Compliance Committee will have regard to in imposing AMAs on Members:

Level	Amount of AMA	Description
3	\$2,500 - \$10,000	for the most serious non-compliance issues resulting in a significant risk to public safety or financial or other potential harm to stakeholders, particularly in combination with ongoing or repeat contraventions and/or economic benefit from non-compliance
2	\$1,000 - \$5,000	for more serious non-compliance issues creating a risk to public safety or financial or other potential harm to stakeholders or where there has been past non-compliance
1	\$100 - \$2,000	for fairly minor non-compliance issues

## **Appeals**

29. The current Terms of Reference for the Appeals Committee are attached as Annex II to this Schedule 2 for information.
30. A Member who has been found to be non-compliant and who wishes to appeal a decision of the Compliance Committee may do so by filing, in writing, a request to the Secretary of the Committee for the Appeals Committee of the Corporation to review the matter. Such an appeal must be filed within thirty (30) calendar days of receiving the written decision of the Compliance Committee. The party must explain in writing the material grounds for the appeal and why the original decision should be modified. Those grounds may include a question of fact, of law or a mixed question of fact and law.
31. The Compliance Committee must provide to the Appeals Committee a copy of the documents and information on which the Compliance Committee's decision was based and any response to the submissions of the person appealing within thirty (30) calendar days of the filing of the appeal.
32. The Appeals Committee must, in the absence of the person appealing and the Compliance Committee, consider the material submitted to it, deliver its decisions and reasons in writing to the person appealing and to the Compliance Committee.
33. The decision of the Appeals Committee of the Corporation is final and binding and the Member affected by the decision cannot and will not seek to appeal or challenge the decision.
34. Decisions of the Appeals Committee will be posted on the Corporation's website.

## **Court Actions**

35. Failure of a Member to comply with Section 19 of Part II of this Schedule 2 and in particular to pay an AMA levied under Section 19(c) by the Compliance Committee may result in the Corporation pursuing the non-compliance by the Member in the Ontario Superior Court to the *Courts of Justice Act (Ontario)*, as amended from time to time.

The laws of the Province of Ontario will apply to the interpretation of this Schedule 2.