

ONTARIO UNDERGROUND INFRASTRUCTURE NOTIFICATION SYSTEM ACT, 2012

REGULATORY PROPOSALS FOR COMMENT

Ontario Ministry of Consumer Services
November 1, 2013

Purpose of this consultation

The Ministry of Consumer Services (the ministry), in cooperation with Ontario One Call (ON1Call), is seeking input on proposals for matters to be addressed by regulation under the *Ontario Underground Infrastructure Notification System Act, 2012* (the act).

In February and March 2013, the ministry held a stakeholder consultation on key implementation topics. A copy of the February 2013 consultation paper is on the Regulatory Registry posting under “Additional Documents” for your reference. The proposals below have been informed by those consultations and numerous meetings throughout the spring. Key questions about the scope of membership and the operation of the act raised during the consultation needed to be addressed before regulatory proposals could be developed. In June 2013, ON1Call issued an interpretation bulletin to clarify common stakeholder questions regarding membership and other matters. A copy of this interpretation bulletin is on ON1Call’s website at: <http://on1call.com/index.php/resource-centre/latest-news/>.

You are invited to comment on the regulatory proposals and indicate your support, or suggest improvements or alternatives. Providing the reasons behind your views will help us incorporate your comments.

More information about how to respond is provided at the end of this paper. Responses must be received no later than December 16, 2013.

Summary of the act

The act was passed by the Ontario Legislature and came into effect on June 19, 2012. It converted ON1Call, an existing not-for-profit corporation, into a statutory not-for-profit corporation, with responsibility to administer the act. The act’s objective is to reduce damage to underground infrastructure by streamlining request processes for excavators obtaining locations of buried infrastructure (i.e., locates) from underground infrastructure owners or operators.

ON1Call’s function is to operate a call centre to route locate requests to underground infrastructure owners who are responsible for providing locates. The act establishes that specified underground infrastructure owners or operators in Ontario are members of ON1Call and requires these members to provide information regarding the location of their underground infrastructure to ON1Call. Underground infrastructure owners are deemed members of ON1Call by the following dates as per the act:

- **June 19, 2013** for Hydro One Inc., Ontario Power Generation Inc., operators of electrical distribution systems, gas distributors and transmitters, persons or entities

regulated under the *Oil, Gas, and Salt Resources Act*, and every person or entity that owns or operates underground infrastructure that crosses a public right of way or is in the vicinity of a public right of way.

- **June 19, 2014** for municipalities that own or operate underground infrastructure.

The act also requires that a locate be obtained prior to excavation. Other provincial legislation related to electricity, gas distribution and occupational health and safety also make obtaining locates a requirement.

Overview of regulatory proposals

Proposed regulations address two aspects of the act's administration. The first would set the maximum fine amount, upon prosecution for offences. Without an amount for a fine set by regulation, the act cannot operate in that area. The second provides ON1Call with the ability to impose terms and conditions on members to promote compliance, and to take action for non-compliance. Without terms and conditions embedded in a regulatory requirement, ON1Call's ability to establish operational requirements between ON1Call and its members may not be enforceable and could lead to service disruptions.

Details of proposal

- 1. Set a maximum fine for prosecution of any person, including excavators and members of ON1Call, who fails to meet the requirements of the act as outlined in Sections 5, 6, and 7 as applicable, in the amount of up to \$10,000 per offence.**

Objective: To set a maximum fine amount for the prosecution of offences under the act.

Enforcement approach for excavators

During the February consultation, some stakeholders sought strong enforcement against excavators, while others were concerned about duplication, with four enforcement authorities. The act requires excavators to obtain a locate before proceeding with excavation. There are currently three other legal regimes and responsible authorities which enforce the requirement for excavators to obtain locates before excavation:

- 1) Ministry of Labour (MOL), under the Occupational Health and Safety Act
- 2) Electrical Safety Authority (ESA), under Part VIII of the Electricity Act
- 3) Technical Standards and Safety Authority (TSSA), under the Technical Standards and Safety Act

These legal regimes have requirements relating to safe excavation around underground infrastructure. MOL, ESA and TSSA have enforcement tools and resources at their disposal to enforce compliance against excavators. Therefore, given the existence of three other statutes under which other regulators can take action when a locate has not been obtained, ON1Call's proposed role will be to monitor excavator behavior for compliance with the act's requirements. ON1Call advises that it will work in a coordinated fashion with MOL, ESA and TSSA to support these regulators in enforcement against excavators. In satisfying its mandate to raise public awareness about the need for safe digging practices under the act, ON1Call will encourage safe excavation practices through communication and education programs. However, in certain situations, ON1Call may choose to nonetheless pursue its own prosecution under the Provincial

Offences Act against excavators or members. More information about ON1Call's proposed approach to excavator compliance is on ON1Call's website, "Compliance process for excavators" at <http://www.on1call.com/files/ByLaw2&Schedules.zip>.

Enforcement approach for members

ON1Call intends to rely primarily on a corporate by-law enforcement model to promote compliance by members. This would include imposing specified non-financial and financial sanctions as appropriate, as an alternative to prosecution. ON1Call's compliance approach against members is described in further detail in proposal #2, outlined below. However, in order to give effect to the prosecutions for members, should there be a need, a maximum fine amount needs to be set.

Fines for members and excavators

The ministry proposes to set one maximum fine amount of up to \$10,000 per offence that would apply to offences by members or excavators under sections 5, 6 and 7 of the act (as applicable). Section 5 relates to when underground infrastructure owners must become a member, section 6 relates to when and how a member is required to provide a locate and section 7 relates to excavators requesting locates prior to excavation. This amount would be used as the upper limit of court-imposed fines for offences under this act.

The proposed maximum fine amount for members for offences under sections 5 and 6 of the act mirrors the maximum penalty proposed for non-compliance with the terms and conditions (see proposal #2). It is the amount that was proposed in February's consultation paper.

The proposed maximum fine amount for excavators, including organizations that are also ON1Call members, for offences under section 7 of the act, is lower than what was proposed in February's consultation paper. The ministry had proposed that fines for excavators be set at \$1,000,000 maximum for corporations, and \$50,000 for individuals. These amounts would have been consistent with the maximum fines under Part VIII of the Electricity Act, and the Technical Standards and Safety Act.

Although requirements in section 5, 6, and 7 attract offences, due to the wording of section 8 of the act, only one fine amount can be established in regulation. The maximum fine amount of \$10,000 is considered to be a more appropriate amount than a \$1,000,000 maximum, given the range of offences and ON1Call's proposed enforcement role. A serious offence, such as an excavator's failure to obtain locates, would continue to be subject to a \$1,000,000 fine under other statutes.

Details of proposal

- 2. Enable ON1Call to set requirements for members through corporate by-laws (i.e., terms and conditions), by allowing ON1Call to impose escalating administrative monetary amounts. The terms and conditions for members set out in the corporate by-law would be incorporated by reference in regulation.**

Objective: To provide ON1Call with the ability to promote member compliance of the act, and impose requirements necessary for ON1Call to effectively administer the act.

Terms and conditions for members

The act does not specifically give ON1Call a way to set operational requirements and ensure member compliance. However, ON1Call could be provided with legal authority to use its corporate law tools, such as imposing requirements on members through its by-laws and imposing non-financial sanctions, as well as administrative monetary amounts if those requirements are not met.

Prior to the passage of the act, ON1Call signed service contracts with their clients setting out what requirements the client needed to meet in order to use ON1Call's services. If those requirements were not met, the contract could be terminated. With the conversion of ON1Call to a statutory corporation through the passage of the act, ON1Call is now a mandatory service provider and its members must be members of the corporation by operation of law. Because of this, ON1Call cannot terminate or withhold services from members who do not meet their contractual requirements. As a result, it is proposed that ON1Call would set terms and conditions for members in its by-laws setting out requirements which are identified as necessary for ON1Call to meet its obligations under the act.

ON1Call's intended terms and conditions for members are set out in Schedule 2 to By-Law No. 2 A copy of this document, called ON1Call's Members' Terms and Conditions, is included in the Regulatory Registry posting under "Additional Documents" for your reference. This document has been approved in principle by the ON1Call board subject to being adopted into regulation. It sets out the requirements for members and how ON1Call intends to enforce the requirements including investigations, compliance actions and appeals.

Compliance action

The proposed compliance actions escalate from requiring the member to take a specific action, such as entering into a compliance plan or taking additional compulsory training, or paying an administrative monetary amount to the corporation.

Administrative monetary amounts would be assessed by ON1Call on an escalating scale, depending on the seriousness of the offence, up to a maximum of \$10,000 per instance. ON1Call has specified the following levels of administrative monetary amounts in its by-law:

Level	Administrative Monetary Amount	Description of violation
1	\$100 - \$2,000	Minor non-compliance issues
2	\$1,000 - \$5,000	More serious non-compliance issues such as posing: <ul style="list-style-type: none">• a risk to public safety• financial or other potential harm to stakeholders• where there has been past non-compliance
3	\$2,500 - \$10,000	Most serious non-compliance issues such as posing:

Level	Administrative Monetary Amount	Description of violation
		<ul style="list-style-type: none"> • significant risk to public safety • financial or other potential harm, particularly in combination with ongoing or repeat contraventions • economic benefit from non-compliance

ON1Call’s terms and conditions would also apply to members in their role as excavators which means that ON1Call could take compliance action for members who fail to meet their obligations as excavators, under section 7 of the act.

Reporting on locate completion

ON1Call has no way to confirm if and when a locate request has been completed by a member. It is proposed that members be required to report back to ON1Call once a locate is completed. Reporting on the completion would have to occur within two business days of the date the locate is done. By collecting this key piece of information, ON1Call would be able to maintain a record of the timeliness of the completion of locates. The information would be used by ON1Call to determine patterns of non-compliance by a particular member or sector. As this obligation is included in the proposed terms and conditions, failure to comply would be subject to the proposed compliance actions.

ON1Call has a locate completion notification system called “360 Feedback” which is already used by some members. This proposal would require all members to use this system and input the information within two business days of the completion of the locate. The steps in the process include:

1. Member (or their locate service provider) logs onto ON1Call’s secure website or calls ON1Call
2. Member enters the original ticket number into the system and records the date that the locate was completed for that ticket
3. Information is now updated to display the current status
4. Excavator can access the updated information online or by phone by entering the ticket number

More detailed information about this process is on ON1Call’s website in a document called “Reporting/checking the completion of a locate using 360 Feedback” at <http://www.on1call.com/files/ByLaw2&Schedules.zip>.

Update on other key implementation issues

The ministry’s February consultation paper provided an overview of ON1Call’s governance structure and identified areas where potential regulation is being considered. These areas include:

- Membership
- Defining “crossing and in the vicinity of a public right of way”
- A fee-setting process

- Shorter/longer time frames to provide locates
- Damage reporting requirements.

The following provides a summary of the areas not being addressed in the above regulatory proposals, and the ministry and ON1Call's approach to these issues.

Governance

ON1Call has revised its intended future governance structure. The changes relate to the following areas:

- One class of membership
- End to the preferred selection of the Chair
- Directors' terms to lengthen
- Size of the board to increase
- Board votes to be more representative

Information about the new governance structure is on ON1Call's website at <http://www.on1call.com/files/ByLaw2&Schedules.zip>. The timing for implementing this new governance structure will be aligned with the coming into force of the regulation that enables the application of the terms and conditions.

Membership

ON1Call is responsible for determining whether an owner or operator of underground infrastructure is required to join ON1Call. ON1Call issued two interpretation bulletins regarding membership to provide clarification. Interpretation bulletins 1 and 2 can be found on ON1Call's website at: <http://on1call.com/index.php/resource-centre/latest-news/>. Bulletin 1 addresses how "crossing and in the vicinity of a public right of way" is interpreted by ON1Call.

Fees and fee-setting process

ON1Call revised their current fee schedule. Fee information is on ON1Call's website under "2013 Fee Structure" at: <http://on1call.com/index.php/resource-centre/latest-news/>. ON1Call has set out in their corporate by-law that members will have the right to vote on fee changes. The members must ratify any fee changes at the annual general meeting or a special meeting designated to discuss the issue.

Shorter/longer time frame to provide locates

The act has regulation making authority to establish a shorter/longer time frame for members to provide locates in certain circumstances. The proposed terms and conditions require members to take all reasonable steps to respond to emergency locates within two hours.

The ministry is not proposing regulations to identify circumstances when a locate could be provided in longer than five (5) business days, because the act allows parties to agree to different timing in their specific circumstances. At an appropriate point following the full implementation of the act, and when sufficient compliance data is available, the ministry and ON1Call may review the need for shorter or longer time frames.

Reporting damage to infrastructure

A requirement for members to report back to ON1Call on any known damage to their underground infrastructure as a result of excavation was previously proposed. Although this information would be helpful in monitoring the effectiveness of the act, there are a number of considerations to be taken into account, before imposing this requirement. These include:

- The definition of damage
- Who should report
- When and what should be reported
- Consequences for failure to report.

Once the act is fully implemented, the ministry will work with ON1Call to determine how damage information could be effectively gathered and reported, without imposing undue burden on business.

Your input is important to us. Please provide the Ministry of Consumer Services with your comments by December 16, 2013.

You may send your response by email with “One Call to Dig Consultation” in the subject line to:

Onecalltodig@ontario.ca

You may also mail your response to:

One Call to Dig Consultation
Public Safety Branch
Ministry of Consumer Services
5th Floor, 777 Bay Street
Toronto, ON M7A 2J3

Thank you for taking the time to review these proposals. We look forward to your feedback.

Privacy Statement

Please note that unless requested and agreed otherwise by the Ministry of Consumer Services, all materials or comments received from organizations in response to this consultation will be considered public information and may be used and disclosed by the ministry to assist the ministry in evaluating and revising the proposed regulatory amendments. This may involve disclosing materials or comments, or summaries of them, to other interested parties during and after the request for public comment process.

An individual who provides materials or comments and who indicates an affiliation with an organization will be considered to have submitted those comments or materials on behalf of the organization so identified. Materials or comments received from individuals who do not indicate an affiliation with an organization will not be considered public information unless expressly stated otherwise by the individual. However, materials or comments by individuals may be used and disclosed by the ministry to assist in evaluating and revising the proposed regulatory amendments.

Personal information of those who do not specify an organizational affiliation, such as an individual's name and contact details, will not be disclosed by the ministry without the individual's consent unless required by law. If you have any questions about the collection of this information, please contact consumerpolicy@ontario.ca.