

### **Schedule 3**

#### **to By-law No. 2 of**

### **ONTARIO ONE CALL (the “Corporation”)**

#### **Enforcement Provisions - Excavators**

##### **Preamble**

The following are the principles for best practices respecting investigations and enforcement which the Corporation intends to use in its enforcement of compliance by excavators with applicable requirements.

1. Investigation and regulatory enforcement should be evidence-based and measurement-based. Deciding what to inspect and how to inspect should be grounded on data and evidence, and results should be evaluated regularly.
2. The potential of market forces, private sector and legal actions to support compliance and enforcement will be explored wherever possible: investigations and enforcement cannot be made everywhere and address everything, and there are many other ways to achieve regulatory objectives, including engagement with other stakeholders.
3. Enforcement needs to be risk-based and proportionate: the frequency of investigations and the resources employed should be proportional to the level of non-compliance and enforcement actions should be aiming at reducing the frequency and extent of non-compliance posed by infractions.
4. Enforcement should be based on “responsive regulation” principles: investigations enforcement actions should be modulated depending on the profile and behaviour of specific entities.
5. Investigation functions should be co-ordinated and, where needed, consolidated with other regulators, as less duplication and overlaps will ensure better use of resources, minimize burdens on regulated entities and individuals and maximize effectiveness.
6. Governance structures and human resources policies for regulatory enforcement should support transparency, professionalism, and focus on outcomes. Execution of regulatory enforcement should be independent from political or other influence, and compliance promotion efforts should be rewarded.
7. Information and communication technologies should be used to maximise risk-focus, coordination and information-sharing – as well as optimal use of resources.
8. The Corporation should ensure clarity of rules and process for enforcement and investigations: coherent policies to organize inspections and enforcement will be adopted

and published and clearly articulate rights and obligations of officials and of regulated entities.

9. Transparency and compliance should be promoted through the use of appropriate instruments such as guidance, toolkits and checklists.
10. Work with other organizations including the Technical Standards and Safety Authority (TSSA), the Electrical Safety Authority (ESA), the Ministry of Labour and the Ministry of Consumer Services should be organized to ensure co-ordination of efforts in dealing with enforcement issues.

### **Definitions**

1. In this part of the by-law, unless the context requires otherwise,
  - (a) **“Act”** means the *Ontario Underground Infrastructure Notification System Act* and includes any regulations made pursuant thereto, as the same may be amended from time to time;
  - (b) **“Board”** means the board of directors of the Corporation;
  - (c) **“Excavator”** means any individual, partnership, corporation, public agency or other person or entity that digs, bores, trenches, grades, excavates, moves or breaks earth, rock or the materials in the ground, and “excavation” has a corresponding meaning;
  - (d) **“IC”** means investigations and compliance;
  - (e) **"ICC Coordinator"** means an individual or such individual's designate providing administrative assistance and support for the function of the Compliance Committee and any panels appointed from or the Compliance Committee;
  - (f) **"in writing"** means any permanent form including an electronic record, audiotape or a videotape and "written" has a corresponding meaning.
  - (g) **"investigation"** of a matter means to consider the available information relating to the matter that has entered the investigations and compliance process and to determine whether a disposition other than a referral to the Compliance Committee is appropriate in the public interest;
  - (h) **"Investigator"** means a member of the Corporation's compliance staff

## **Investigations and Compliance Inquiries**

2. An Investigator may inquire into the conduct of an Excavator where,
  - (a) a complaint in writing has been made about an Excavator in regards to a breach of Sections 7 or 8 of the Act; or
  - (b) the Investigator has reasonable and probable grounds to believe that an Excavator has breached Sections 7 or 8 of the Act.
3. An Investigator must gather such information as the Investigator considers relevant and useful for the disposition of the matter and must follow the best practices and processes established for Investigators under the Corporation's policies.
4. Investigator must provide the Excavator who is the subject of the investigation an opportunity to be heard or submit information.

## **Excavators**

5. After considering a matter that has entered the investigation and compliance process and any response in writing from an Excavator, the Investigator 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 Excavator;
  - (c) request the Excavator to complete successfully educational or measures, including, changing the Excavator's internal process as specified by the Investigator at the Excavator's expense;
  - (d) advise, caution or warn the Excavator in writing;
  - (e) request the Excavator to appear before the Investigator or a person designated by the Investigator, at a time and place specified by them, to be cautioned in person;
  - (f) refer the matter to a body that could appropriately deal with the matter which could include one of the Technical Safety Standards Authority (TSSA), the Electrical Safety Authority (ESA) or the Ministry of Labour, or their successors, for appropriate action;
  - (g) take such action that the Investigator considers appropriate that is not inconsistent with the Act or the by-laws;
  - (h) prosecute the Excavator under the *Provincial Offences Act* for breach of Sections 7 and 8 of the Act; or

- (i) engage a respected professional mediator to attempt to resolve a compliance matter involving an Excavator.
6. The Investigator shall deliver a copy of the written reasons for the Investigator's decision to the Excavator, any complainant and any other person whom the Investigator believes has a legitimate interest in them.