

## **A. Introduction**

The Residential and Civil Construction Alliance of Ontario (RCCAO) commends On1Call for taking an initiative to update its by-laws and compliance policies including measures to reduce the occurrence of late locates.

RCCAO has been advocating for more than a decade for One Call related legislation and improvements to the processes followed by regulators, facility owners, locators and excavators, and welcomes the opportunity to comment on On1Call's bylaws and compliance measures. RCCAO has also published [a six-point plan](#) to speed up utility locates in Ontario. RCCAO encourages the board of directors of On1Call to seriously consider implementation of the six-point plan, as well as other measures designed to improve the process.

In addition, RCCAO raised its concerns over lack of adherence to legislated timelines during a deputation to the all-party standing committee on finance and economic affairs. The comments of RCCAO's executive director are captured in the committee's fifth interim [report](#) on the "Economic Impact of COVID-19 on Infrastructure" (see pp. 13-14).

## **B. About RCCAO**

RCCAO is a not-for-profit industry association that represents both labour and management in the residential and civil sectors of Ontario's construction industry. RCCAO and its members strive to provide real solutions to complex issues and frequently commissions independent research on a range of infrastructure-related topics.

For many years, construction contractors attempting to provide needed municipal infrastructure have waited for several weeks beyond the legislated deadline for timely and reliable utility locates. Non-compliance with safety related statutes such as the *Ontario Underground Infrastructure Notification System Act, 2012* (the Act), not only creates unnecessary danger and risks to workers and the public, but also causes delays which in turn increases the cost and delivery time for municipal infrastructure. RCCAO has commissioned a number of studies and reports, including a March 2015 [report](#) on improving Ontario's One Call system.

## **C. Comments on On1Call's Late Locates Policy**

### **1. Performance Based Member Fees**

A significant proposed change is the introduction of performance-based fees for On1Call members, which each member pays based on the number of locate requests. The proposal would not alter the cumulative total of fees but would

instead impose a higher portion of the fees to members that have a greater number of late locate responses, and a smaller portion of the fees to members who have fewer or no late locate responses. In general, RCCAO supports the proposed scheme as it will provide members with a material financial incentive to minimize and avoid late locate responses.

## **2. Suspended Administrative Monetary Penalties**

Another significant proposed change is that the Compliance Committee impose an administrative monetary amount (AMA) “on a suspended basis” in relation to a number of separate infractions. RCCAO believes that since the penalties are capped at the sum of \$10,000 and that the maximum fine is ordinarily reserved for the worst possible offender committing repeatedly providing extremely late locate responses, that the cumulative impact of modest AMA fines will have little, if any, impact on performance of members in providing locate responses. RCCAO submits that if a fine is warranted, that it should not be on a ‘suspended’ basis. While a fine of up to \$10,000 might be a significant deterrent to a home owner or small business operator, such a fine would not be a significant expense to major utilities such as Bell Canada or Enbridge Gas. If the fine is refunded, the deterrence impact would be negligible.

## **3. Single Fine for Multiple Offences**

The proposed late locate policy includes the statement that “AMA cannot be greater than \$10,000 even though it may cover multiple infractions”. It is RCCAO’s understanding that there is nothing in the Act or any other legislation supporting this interpretation. A fundamental principle of judicial determination of fines in Ontario is that the court has the discretion of reducing the number of counts of an offence, if there is more than one offence charged, and also has the discretion to reduce the cumulative fine, if the conviction includes multiple counts. RCCAO submits that since the Act is a safety-related law, that these principles should be applied by the On1Call Compliance Committee. As such, there should be no policy indicating that the maximum fine is to include multiple offences by a member.

## **4. Renegotiation Practices have Provided A Compliance Loophole**

While this issue has not been identified by On1Call, contractors and excavators who have experienced late locates have reported that after a fifteen-day period of no response, the “start date” for a locate request has been renegotiated by utility companies. At a minimum, the data sets provide an inaccurate portrayal of the

late locate situation. More importantly, this tactic provides a loophole for the utility companies to avoid one of the primary objectives of the Act, the delivery of timely locates.

## **D. Revisions to Bylaw No.2**

### **1. Board of Directors Composition**

One of the most significant changes pertains to Article XII the Board of Directors and the addition of a third director to be added from the Excavators sector and increasing the overall size of the board from 15 to 16 members. In RCCAO's six-point plan, it was recommended that 50% of the Board be comprised of non-utility representatives such as excavators, municipalities, and provincial government. While On1Call's proposed change is a small step in the right direction, it falls well short of ensuring that there is no majority "pro-utility bias" in the Compliance Committee.

### **2. Schedule 2 to Bylaw No.2**

While RCCAO supports the majority of proposed changes to Schedule 2, RCCAO takes issue with the Table in section 28, which suggests a range of fines for violations by Members and the statement that \$10,000 is the maximum fine for any matter referred to the Compliance Committee, even if the matter contains multiple instances of non-compliance. As noted in RCCAO's comments in item C-3 above, this is a departure from any other regulatory enforcement under which there can be separate counts and fines if an offence was committed more than once.

### **3. Schedule 3 to Bylaw No.2**

This Schedule outlines On1Call's enforcement provisions against Excavators. Section 2 indicates that an Investigator may investigate the conduct of an Excavator if either (a), there was a written complaint made about the Excavator, or (b) the Investigator has reasonable and probable grounds to believe that an Excavator has breached section 7 or 8 of the Act. It is RCCAO's position that Schedule 3 must be limited to alleged violations of the Act and that the scope of subsection 2(a) is restricted to complaints which allege a violation of the Act by an Excavator. Consequently, the Investigator only has authority take one of the measures listed in section 6, if the Investigator has determined that the Excavator has breached the Act.

One matter that has not changed is that there is no recommended range of fines similar to the table included in section 28 of Schedule 2, nor is there a parallel relief statement regarding a maximum of \$10,000 fine even if there are multiple instances of non-compliance. It is RCCAO's recommendation that any fines imposed by the On1Call Compliance Committee for violations of the Act should be similar.

#### **E. Closing Remarks**

RCCAO commends On1Call for allowing non-Members such as excavators an opportunity to provide comments and suggestions on the proposed changes to the Bylaws and Late Locates Policy, and trust that RCCAO's submission will be given serious consideration.

As RCCAO's membership represents thousands of excavators across the Province of Ontario, we stand ready to work with On1Call and other stakeholders to implement practical and effective policies regarding compliance with the Act.

End of Submission