



November 21, 2022

Ministry of Public and Business Service Delivery  
6<sup>th</sup> floor, 56 Wellesley St. West.,  
Toronto, Ontario  
M7A 1C1

*Sent via email submission.*

**RE: 22-MGCS020  
Consultation on an Administrative Penalties Regime for Ontario One Call.**

On behalf of the Ontario Road Builders' Association (ORBA), we would like to provide the following written comments in response to the proposed Administrative Penalties Regime for Ontario One Call, under the *Ontario Underground Infrastructure Notification System Act, 2022*.

The Ontario Road Builders' Association is proud to represent the road building sector in Ontario. Our members build and maintain the majority of provincial and municipal roads, bridges, transit and transportation infrastructure across the province. The road building sector directly and indirectly employs approximately 56,000 workers at peak season and impacts all Ontarians.

We were very pleased to see this government make improvements to the delivery of locates under the *Getting Ontario Connected Act, 2022*. This included provisions allowing contractors on the same dig site to share locate information, using the dedicated locator model for certain projects, allowing Ontario One Call to issue administrative penalties against non-compliant utility members, and improving the overall governance structure of Ontario One Call.

In 2022, Ontario One Call's own data reports that 49 per cent of call tickets took longer than 15 days, with only 14 per cent being completed within the legislated timeline.<sup>1</sup> Contractors waiting weeks or months for utility locates has a direct impact on project timelines, the movement of goods and people, and road safety caused by impeded traffic. Delay penalties, downtime costs and productivity losses when labour and equipment are taken out of production is substantial for contractors, particularly in an industry operating within tight profit margins and with timelines affected by seasonal and weather constraints.

ORBA strongly supports the implementation of administrative penalties as a tool to

improve locate delivery and promote safe digging practices. These penalties must be consistently and evenly applied to both members and excavators in strict compliance with the Act. Allowing Ontario One Call the discretion to determine compliance and enforcement tools it uses undermines the consequences of having a prescribed penalty regime. ORBA is concerned that leaving Ontario One Call responsible for issuing penalties, will not result in any change— Ontario One Call has not historically issued penalties against its members.

For example, we would suggest the following change to subsection 3(1), which states, “the assessor may impose a separate administrative penalty for each day or part of a day on which the contravention occurs or continues.” We suggest that this should be changed to: “the assessor shall impose a separate administrative penalty for each day or part of a day on which the contravention occurs or continues.”

Please see ORBA’s additional comments below:

**1. Are there other contraventions in the One Call Act that should be considered for inclusion as part of the administrative penalty regime?**

A large fine should be levied for missed or inaccurate utility locates. Delayed utility locates pose serious safety concerns and delays to project timelines.

**2. Are the proposed penalty amounts for each contravention appropriate?**

There should be some attempt to differentiate between penalties that will be levied against utility members versus excavators. The proposed penalties for contraventions for excavators are larger in magnitude than they are for utility members. In cases where there is failure to comply with requirements before commencing a dig, that may be warranted. However, the penalty against excavators for digging without re-marks is unnecessarily high. We suggest that, if there have been no changes in infrastructure and the excavator has not left the site, this should be significantly reduced.

Failure to dig without locates is *very different* from failure to dig without relocates. With regards to relocates, the excavator is aware of the existing infrastructure and the stipulation could be “as long as the excavator has not left the site.” The proposed \$8,000 penalty should be lower to reflect the lower risk to public safety.

Similar to the application of subsection 10(3), where the member is required to notify Ontario One Call and the excavator within two business days of a change in locate information, members should be required to notify the corporation and excavator prior to the expiry of a locate and to extend the validity period where there has been no change to infrastructure.

**3. Are there any implementation considerations the ministry should be aware of?**

It is noted that the implementation date for this penalty regime is April 1, 2023, and that, upon approval, Ontario One Call will then develop policies and procedures for its application.

We remain extremely concerned that there will not be any improvements made in time for the 2023 construction season, or likely even the 2024 construction season. The continued delays and impacts on infrastructure projects will continue to the detriment of excavators.

Before the proposed penalty regime is adopted, an implementation plan is necessary and should be developed transparently with all stakeholders.

**4. Are there other purposes that should be considered respecting One Call's use of funds collected from the administrative penalty regime?**

Funds could also be directed towards the locate service providers' certification programs and to increase training for dedicated locators. The certification of locators is critically important to locate system improvements and without additional locators, locates will remain consistently late.

Funds could also be used to compensate excavators for project interruption due to late utility locates.

**5. Any additional comments or concerns on the proposed administrative penalty regime under the One Call Act.**

Currently, a perception exists that the dedicated locator model does nothing to increase the number of locators performing the work, but rather gives benefit to owners or excavators willing to pay into the dedicated locator model.

Also, timelines for the implementation related to these policies and procedures should be strict and have some element of oversight. We agree with our partner association the NCHCA that the heavy civil construction industry is an important stakeholder and should be allowed to convene a committee on an immediate basis to provide input and consultation.

Thank you for the opportunity to provide comments. Please do not hesitate to contact Brianna Puigmarti, Senior Policy Advisor at [Brianna.puigmarti@orba.org](mailto:Brianna.puigmarti@orba.org) with any questions regarding this submission.

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<sup>i</sup> RCCAO (March 8, 2022). "RCCAO Praises Crucial Reforms to Ontario's Utility Locates System." Accessed: 's Utility Locates System". Accessed: <https://rccao.com/news/files/RCCAO-Press-Release-Mar-08-2022.pdf>.