



Briefing Note

Ontario Underground Infrastructure
Notification System Act, 2012

Issue

This note provides background on the Ontario Underground Infrastructure Notification System Act, 2012 (the Act), which enacts Ontario One Call Ltd. as a single point of contact for all underground utility location services in Ontario. The Act received Royal Assent on June 19, 2012 and is currently in effect.

Background

Bill 8 (now known as the Ontario Underground Infrastructure Notification System Act, 2012) was introduced on November 24, 2011 by Conservative MPP Bob Bailey and NDP MPP Paul Miller as a Private Members' Bill to prevent pipeline strikes. It received Royal Assent on June 19, 2012 and is currently in effect.

The impetus of the Act was the fatal pipeline strike that occurred on April 24, 2003 at 3887 Bloor St. West in Toronto that killed seven people, seriously injured four others, destroyed a two-story commercial and residential building, and caused extensive damage to adjacent properties.

The purpose of the Act is to establish a not-for-profit call centre to serve as a single point-of-contact for all underground utility location services in Ontario. It requires all owners of underground assets to join the call centre, including named entities such as Hydro One Inc. and every municipality in Ontario. Currently, participation in a one-call system is voluntary.

The Act establishes Ontario One Call Ltd. (ON1Call), a corporation that is currently operating in Guelph Ontario, as a not for profit corporation without share capital with the following objects:

- To operate a call system to receive excavator requests for the location of underground infrastructure within Ontario.
- To identify for excavators whether underground infrastructure is located in the vicinity of a proposed excavation or dig site.
- To notify a member of the Corporation of proposed excavations or digs that may affect underground infrastructure of the member.
- To raise public awareness of the Corporation and the need for safe digging.

ON1Call is one of three existing one-call-to-dig providers that operate in Ontario. The other two are Digline, which receives locate requests for infrastructure owned by Rogers, and DigNorth, which operates in Northern Ontario. Bill 8 would establish a requirement for ON1CALL to operate, as part of its call system, at least one call centre located in Northern Ontario.

The Act requires the following persons or entities who own or operate underground infrastructure to join ON1CALL:

- Every municipality in Ontario.
- Hydro One Inc. and Ontario Power Generation Inc. (currently these two corporations are already voluntary members of ON1Call)
- Every gas distributor and transmitter defined by Ontario Energy Board Act, 1998
- Every operator of a distribution system, as defined in the Electricity Act, 1998.
- Every person or entity regulated under the Oil, Gas and Salt Resources Act, (this includes commercial and private gas well operators).
- 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.

The Act also requires members of ON1CALL, upon receiving a notification of a proposed excavation, to mark on the ground the location of its underground infrastructure in the vicinity of the site and provide a written document containing information respecting the location of underground infrastructure. If there is no underground infrastructure in the vicinity of the site, the member shall state in writing that none of its infrastructure is affected.

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The member is required to make all reasonable attempts to mark the location of underground infrastructure or advise that there is none within five business days. The Act also provides provisions to set out other time limits specific to the circumstances.

Duties Imposed on Excavators

Excavators are required to contact ON1CALL prior to an excavation to request locates for all infrastructure that may be affected by the excavation. (There are existing regulations that require the excavator to contact the infrastructure owner directly.)

Excavators cannot proceed with an excavation until all necessary locates are properly provided by the member and until the excavator has ensured that all locate markings do not conflict with the written information provided.

The Act, however, does not contain a specific requirement for markings to be accurate, which is a requirement under existing regulations, and may cause enforcement issues.. The Ministry of Consumer Services has advised that the two pieces of legislation do not conflict, and therefore no loophole in the legal obligation for an accurate marking exists. TSSA would continue to administer the requirements under its legislation.

The Act also requires excavators to not dig in a manner that they know or reasonably ought to know would damage or otherwise interfere with any underground infrastructure. The Act defines 'excavator' broadly enough to potentially include a homeowner digging with a shovel.

These requirements are consistent with what is currently in place. For example, the Ministry of Labour's (MOL) Construction Regulation prohibits excavators from excavating before receiving the necessary locates. It is not clear how these sections of the One Call law will be enforced.

Offences

The Act creates offences for failure to comply with specified requirements under the Act or regulations including the failure to join ON1CALL within the time frame set out, failure for the member to provide information to sufficiently fulfill its objects within the appropriate time frame, failure for the member to provide locates in the time frame, and failure for the excavator to carry out the duties imposed upon him/her.

The Act does not, however, specify which entity will be responsible for enforcement.

There are currently multiple regulators, including the Electrical Safety Authority (ESA), the Technical Standards and Safety Authority (TSSA), and the Ministry of Labour (MOL), that share the administration and enforcement of existing requirements to obtain locates, but are not authorized to enforce the Act.

The Act also does not provide a procedure for its enforcement, common provisions related to the appointment of persons who are to enforce obligations in the Act, and provisions for enforcement personnel to conduct inspections or investigations. The lack of such provisions may limit the ability to conduct enforcement proceedings under the Act.

Legislative Background

No other Ontario legislation currently requires membership in a one-call system.

Three Ontario statutes require an excavator to obtain a locate before digging: the *Technical Standards and Safety Act, 2000*; the *Electricity Act, 1998*; and the *Occupational Health and Safety Act (OHSA)*. O. Reg. 210 requires license holders to provide accurate locates. The OHSA also sets out the requirement for excavator not to proceed



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with excavation until all services are accurately located and marked (Section 228 of Construction Regulation 213/91).

The Act differs from existing regulatory requirements in the following ways:

- Making it mandatory for the excavator to call ON1CALL rather than the infrastructure owner directly as is currently set out in the existing regulations.
- Requiring the infrastructure owner (or “member”) to provide locates within a specific time frame. The TSS Act and the Electricity Act set out that locates for gas and electrical distributors are to be provided within a “reasonable” time.
- There is no time frame set out in the OHS Act for other infrastructure owners to provide locates. This means that municipal water/sewer infrastructure owners have not been required to provide locates within a set time frame. The ability to comply with a timeline requirement without incurring costs to significantly alter their current processes has been raised as a concern.

Three specific issues have been identified:

- 1) There is no enforcement body outlined in the Act, and further it is duplicative of O. Reg. 210/01, Oil and Gas Pipeline Systems, where TSSA currently has jurisdiction.
- 2) The Act only identifies that a mark shall be placed on the ground prior to excavation, but does not require accuracy.
- 3) The Act defines excavator broadly enough to potentially include a homeowner digging with a shovel.

Current Status

The One Call legislation was introduced jointly as a Private Members’ Bill by two MPPs (MPP Sarnia-Lambton and MPP Hamilton East-Stoney Creek) and received Second Reading on December 1, 2011.

During Second Reading debate, MPPs from all parties spoke in support of requiring underground infrastructure owners to participate in a one-call system. The Act was referred to Standing Committee on General Government for three days of public hearings and received clause by clause review on April 30, 2012.

The majority of submissions were in support of the Act, including: natural gas stakeholders, excavator associations, and safety organizations such as the Ontario Regional Common Ground Alliance (ORCGA). There were seven submissions opposed including the Association of Municipalities of Ontario (AMO), the Northwestern Ontario Municipal Association (NOMA), the Electricity Distributors Association (EDA), Shaw Communications Inc., and DigNorth.

The Act was amended by Standing Committee and ordered for Third Reading on May 1, 2012. On June 14, 2012, the bill received third reading and received Royal Assent on June 19, 2012.



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In September of 2012, MCS designated as the lead ministry for this Act by Order in Council. MCS is currently engaging stakeholders, including TSSA and One Call, on implementation issues.

Key Messages

- TSSA supports the intent of the Act to minimize pipeline strikes.
- TSSA is working with ON1CALL, the Ontario government and other stakeholders to better understand the new law and to support its effective implementation.

Next Steps

Continue to work with MCS on implementation-related issues.

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