

Schedule 2
to By-Law No. 2 of
ONTARIO ONE CALL
(the “Corporation”)
Amendments June 2020

PART I

Terms and Conditions of Membership

Definitions

1. In this Schedule,

“**Act**” means the *Ontario Underground Infrastructure Notification System Act, 2012, S.O. 2012, Chapter 4* and includes any regulations made pursuant thereto, as the same may be amended from time to time;

“**Business Day**” means a day other than a Saturday, Sunday or statutory holiday in the Province of Ontario;

“**By-laws**” means By-law No. 2 of the Corporation, as amended from time to time, or any subsequent general by-law enacted by the Corporation;

“**Call Centre**” means the call system operated by or on behalf of the Corporation;

“**Clear**” means a written statement made by the owner of underground infrastructure indicating that none of its underground infrastructure in the vicinity of a proposed excavation or dig site will be affected by the planned excavation or dig;

“**Corporation**” means Ontario One Call, continued pursuant to subsection 2(1) of the Act;

“**Emergency Locate Request**” has the meaning set out in Section 7(c) of Part I of this Schedule 2;

“**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 other materials in the ground, and “excavation” has a corresponding meaning;

“**Excavator Locate Request**” means notification by an Excavator of Proposed Work to the Call Centre, to be by way of telephone, electronic transmission by computer, or such other means as the Corporation and the Member may agree upon from time to time;

“**Locate**” means markings on the ground made by the owner of underground infrastructure indicating the location of its underground infrastructure; and providing to the Excavator a written document containing information respecting the location of the underground infrastructure;

“**Locate Request**” means one of a Standard Locate Request, Priority Locate Request or Emergency Locate;

“**Member**” means any person or entity described in Section 5 of the Act and admitted as a Member and includes anyone otherwise admitted as a Member pursuant to the By-laws;

“**Member’s Plant**” means the Member’s underground facilities in existence at any time;

“**Notification of Locate Request**” means the communication to the Member of an Excavator Locate Request received by the Call Centre;

“**Primary Telephone Number**” means the telephone number designated by the Corporation from time to time to enable an Excavator to make an Excavator Locate Request by telephone or such other means of communication which requires the use of a telephone number;

“**Priority Locate Request**” has the meaning set out in Section 7(b) of Part I of this Schedule 2;

“**Proposed Work**” means any actual or intended excavation, demolition, drilling or blasting and includes, without limitation, any disturbance of the surface and/or subsurface of the earth by an Excavator;

“**Services**” means the Call Centre’s receipt, processing and recording of an Excavator Locate Request and communication of a related Notification of Locate Request to the Member for the Member’s Service Area;

“**Service Area**” means the geographical area in which a Member operates;

“**Specifications**” means the Corporation’s performance standards and specifications, which will be delivered by the Corporation to the Member along with these terms and conditions and which are also annexed as Schedule 4 to By-law No. 2, as the same may be revised or replaced from time to time;

“**Standard Locate Request**” has the meaning set out in Section 7(a) of Part I of this Schedule 2;

“**360 Feedback**” means the web-based solution provided by the Corporation for either (i) Members or Members’ designates to use to notify the Corporation whenever the status of a Locate Request has changed or (ii) anyone that has requested a locate to use the online function and check the status of their request; or such other software adopted by the Corporation from time to time.

“**Website and Social Media**” means any electronic platform which is a means to communicate or disseminate information to external parties

Commented [BH1]: New definition included to cover website and social media

Application

2. These terms and conditions will apply to all Members.

The Act

3. Each Member must comply with the obligations imposed on it by the Act and this Schedule 2 whether operating in the role of infrastructure owner or operator, or in the role of an Excavator.

Limitation of Liability

4. Each Member is solely responsible for the accuracy and adequacy of their locates, and any information provided by it to the Corporation.
5. Each Member acknowledges that the Corporation is not ~~be~~ responsible for ensuring the accuracy of locates, nor will the Corporation be held liable for any injury or damage as a result of excavation performed using a locate provided by any Member or any Member's contractor or subcontractor.
6. Each Member acknowledges that the Corporation is not ~~be~~ liable to the Member for any special, indirect or consequential damages, including but not limited to, loss of profit, loss of revenue, failure to realize expected savings or other commercial or economic losses or damages of any kind caused by the Corporation's failure to meet the obligations as set forth in this Schedule, the By-laws, and the Act.

Categories of Locate Requests

7. Locate Requests are defined as being one of the following levels of priority:
 - (a) Standard: a Standard Locate Request is proposed work reasonably expected to commence in thirty (30) Business Days and reasonable attempts to do all things required for a Locate within a period of five (5) Business Days from its receipt on the system that the Member has designated for those purposes as required under Section 16 of Part I below. Standard Locate Requests are transmitted to the Member within twenty-four (24) hours of receipt by the Call Centre's staff.
 - (b) Priority: a Priority Locate Request is proposed work that is requested less than five (5) Business Days before the dig is to start but is not otherwise an Emergency Locate. A Locate is requested to be completed in less than five (5) Business Days from its receipt on the system that the Member has designated for those purposes as required under Section 16 of Part I below, but such performance cannot be guaranteed. Non-Standard Locate Requests are transmitted to the Member within twenty-four (24) hours of receipt by the Call Centre's staff.
 - (c) Emergency: an Emergency Locate Request is defined as a loss of service by a utility that in the circumstances would be considered essential, so that absence of the service can reasonably be expected to result in an imminent or significant safety or environmental hazard, or imminent threat to the person or the public. An Excavator crew is either on site or has been dispatched. The circumstances therefore require facility owners to take all reasonable steps to complete a Locate response (clear or locate) within two (2) hours from its receipt on the system that the Member has designated for those purposes as required under Section 16 of Part I below. Emergency Locate Requests are transmitted to the Member within

fifteen (15) minutes of receipt by the Call Centre's staff, ~~and are often followed by a follow-up call to the Member (at the Member's option).~~

Commented [BH2]: Remove reference to discretionary service in by-law

Mapping, Notification and Data Requirements

8. Each Member will at all times provide the Corporation with accurate up-to-date information as required in order to determine and map each Member's Service Area information and any changes to it from time to time.
9. Each Member will provide the Corporation with the Member's Plant location information necessary to maintain and complete the Corporation's mapping system. Each Member will be solely responsible for maintaining the accuracy of its Plant location information. The Corporation will use the information provided by and approved by each Member.
10. Each Member will provide the Corporation with instructions in writing as to how each Member will receive notification of Locate Requests, and update such instructions when necessary or periodically.
11. Each Member will provide the Corporation with the telephone number(s) of the Member's receiving location or locations to direct and verify notification of Locate Requests to the Member and for verbal transmission in the event of a failure of the Corporation's equipment. Each member will update this information upon the Corporation's request, or when otherwise necessary or appropriate.
12. Subject to any agreement between a Member and an Excavator on a different time limit, each Member will make the necessary arrangements with Excavators for the Locate Request within the time frames described in Section 7 above following receipt of the Notification of a Locate Request. Each Member shall respond to an Excavator's Locate Request by either (i) completing a Locate as defined herein and within the time frames described in Section 7 above, or (ii) providing a Clear as defined herein, following receipt of the Notification of a Locate Request.
13. No Member will use the Emergency Locate Request for purposes other than a bona fide Emergency, as defined in S. 7 (c) of this schedule. ~~Locate and~~ Members will ensure their contractors only use Emergency Locate Requests for a bona fide Emergency Locates. If a Member who is also excavating is found to be abusing Emergency Locates, the Member will be subject to disciplinary actions.
14. The Members or the Members' designate will notify the Corporation on the completion of each Locate. The Members shall provide feedback of completed locates to the Corporation's 360 Feedback within three (3) Business Days of the Locate's completion in the field (which system can also accept a negotiated date to be entered) ~~unless there is reasonable justification acceptable to the Corporation that it cannot be done in the three (3) Business Days; but in any event the feedback must be provided within five (5) Business Days after the completion of the Locate.~~
15. Subject to any agreement between a Member and an Excavator on a different time limit, the Members will follow the time period set out in this Section to carry out relocates (eg: the need to start a locate because the prior locate expired or there has been a change) or re-marks (eg: someone's original mark washed away on the prior locate and needs to be

Commented [BH3]: Clarifies members' responsibility to ensure their contractors do not abuse emergency locates system

Commented [BH4]: Simplify requirement to complete Feedback 360 to three business days

redone) which shall be five (5) Business Days in each case - being the same as a Standard Locate Request.

16. A Member of the Corporation shall provide, at the time or times specified by the Corporation, any such information as is deemed necessary for the Corporation to fulfil its objects. This includes information which advances the Corporation's public awareness mandate, including damage reporting data.

Commented [BH5]: This largely repeats what is already in the legislation, and is included here for the purposes of requiring mandatory damage reporting

Equipment Specification and Requirements

16. Each Member will supply and maintain, at the Member's sole cost and expense, compatible receiving equipment as required by the Corporation for the transmission of Locate Requests from the Call Centres, including:
 - (a) Paying the cost of installing communication lines at the Member's premises to ensure supply and maintenance of compatible receiving equipment; and
 - (b) Paying all costs associated with dedicated communication lines to receive notifications of Locate Requests, if the member so chooses to install such facilities.
17. Each Member will promptly notify the Corporation of any proposed or actual actions to relocate, move or disconnect any of the Member's receiving equipment.
18. In order to improve the quality of services, the Corporation will be permitted to make updates and changes to its equipment, software, rules of operation and any other procedure. Each Member will be given reasonable notice of such updates or changes and will be required to make any necessary changes or modifications within a reasonable time frame in order to comply with such changes or updates.

Care of Property

19. Each Member will take proper care of any and all property owned by other Members or the Corporation which may be in the custody, care, or control of that Member, and will be responsible for any loss or, or damage to any such property until it is returned to the custody, care, or control of its rightful owner.

Confidentiality

20. Each Member and the Corporation will keep any information relating to the business affairs of any Member and the Corporation, obtained as a result of Membership, and which is confidential, made known as such and not publicly available, in the strictest confidence. Each Member will be responsible for ensuring any representative, affiliate, director, officer, employee or agent of the Member holds all such information in the strictest confidence.
21. Each Member and the Corporation will not use any confidential information except as is required for each to perform its obligations under this Schedule 2, By-Law No. 2 or the Act.
22. Each Member will keep all information and other data relating to the Corporation and its Services, programs, manuals, procedures, and any documentation relating thereto, strictly

confidential unless compelled to disclose by law, in which case the Member will notify the Corporation and permit it the opportunity to prevent or limit such disclosure.

23. Each Member will recognize that any breach of the above confidentiality provisions would cause irreparable harm which could not be adequately compensated for with damages, and in the event of a breach, each Member consents to an injunction being issued to prevent disclosure of confidential information.
24. Each Member acknowledges that all information and other data associated with the Service, save and except for the Member's confidential information and the Member's mapping information will remain the sole exclusive property of the Corporation.
25. Notwithstanding any other provisions hereof, the Corporation acknowledges and agrees that the Member owns all right, title, and interest in the marketing, financial, technical, scientific, or other information, data including mapping data, plans, drawings, diagrams, reports, know-how and intellectual property relating to the Member (the "Member Information") and nothing in these terms and conditions transfers any right in the Member Information to the Corporation, except as expressly set out in these terms and conditions.

Insurance

26. Each Member will either maintain a policy of comprehensive general liability insurance with a minimum coverage against bodily injury and property damage caused by the negligence of the Member in an amount of not less than two million dollars (\$2,000,000.00) per occurrence or such other amount as the Board of Directors of the Corporation may from time to time reasonably require, or provide satisfactory evidence to the Corporation of other alternate mechanisms equivalent to insurance coverage specific to the Member to accept liability up to that limit at a minimum. The Member will, at the Corporation's request, furnish forthwith to the Corporation a Memorandum of Insurance or an Insurance Certificate setting out the terms and conditions of each policy maintained by the Member in order to satisfy the requirements of this Section.

Fees

27. The Members will pay the fees for Services in accordance with the fee model used by the Corporation and to be provided to Members by the Corporation, as are determined from time to time by the Board of Directors of the Corporation. Each revised set of proposed fees, and if applicable the said fee model, must be approved by the Members at either the annual general meeting or a special meeting of Members before it comes into effect. In order for such approval to occur, at least two-thirds of all Members in attendance at such a meeting (whether in person or by proxy) must pass the revised fees and/or changes to the model.
28. The Members will also pay for all taxes and other charges or levies pursuant to Federal, Provincial or Municipal laws or by regulatory authorities relating to the Services provided to the Member by the Corporation.

Billing and Invoicing

29. The Corporation will invoice the Member for the Services provided during the previous month, on a monthly basis. The Member will pay the amount set forth in the invoice in full within thirty (30) calendar days from date of receipt of the particular invoice

(hereinafter the “**invoice period**”). If there are corrections or inaccuracies in the invoice, it is the obligation of the Member to contact the Corporation.

30. Interest will be charged and payable by the Member on all amounts remaining unpaid after the invoice period and interest will be calculated monthly at the rate of 1.5% per month, which is equivalent to an effective annual rate of 19.56% per annum.

Transition from Service Agreements

31. The Members acknowledge that all services agreements that the Corporation and its Members have entered into prior to these terms and conditions coming into force are terminated or cancelled on the coming into force of By-Law No. 2 of the Corporation and are prospectively replaced by the terms and conditions in this Schedule 2.

Other Member Acknowledgements

32. Each Member also acknowledges:

- (a) that the Corporation has all right, title and interest in the Primary Telephone Number, **website and social media accounts** and the Member will not at any time, either directly or indirectly, make any claim that it has any right, title or interest in the Primary Telephone Number, **website and social media accounts**;
- (b) that the Corporation assumes no liability for infringement of patent or copyright claims based upon: (i) equipment supplied by other than the Corporation into which a computer system is incorporated; (ii) any assembly, circuit, combination, method or process in which any of the computer systems may be used other than those specified by the Corporation; (iii) any compliance with the Member's detailed specifications against the advice of the Corporation; or (iv) the modification of any computer system or any part thereof, unless such modification was made or authorized by the Corporation;
- (c) That ~~telephone and facsimile~~ communications may, from time to time, be partially or wholly interrupted or inaccurate as a result of a telecommunication interruption. In that event:
 - ~~(i) the Corporation will not be required to maintain the Services at levels set forth in the Specifications annexed as Schedule 4 to By Law No. 2 (the “Specifications”);~~
 - (ii) the Corporation will execute measures and practices designed to aid the Members and to provide timely and accurate restoration of the Services; and
 - (iii) the Corporation will not be liable for any loss or damage of any kind whatsoever arising as a result of such telecommunication interruption;
- ~~(d) that in order to continuously improve the quality of Services to Members, the Corporation reserves the right to make changes to the Services and Specifications or any part thereof, including without limitation, changes to rules of operation, accessibility periods, customer identification procedures and types of equipment;~~

Commented [BH6]: Schedule 4 is proposed for deletion

~~The Corporation will provide reasonable notice to Members of any such changes and will use its reasonable commercial efforts to ensure such changes do not negatively affect Services;~~

Commented [BH7]: Removes language around operating standards from by-laws

- (e) that the Corporation does not warrant the accuracy of any information provided by an Excavator, be it contained in any Excavator Locate Request or any other information provided by an Excavator whatsoever and the Corporation will not be liable for any loss to the Member as a result of inaccuracies provided by an Excavator in any such information; and
- (f) that the Corporation will not be in any manner be liable whatsoever to a Member or any party claiming through the Member for any losses, costs or damages due to errors in or failing of mapping software licenses from independent third parties which is used by the Corporation in the provision of Services.

PART II

Enforcement

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 its Members with applicable requirements.

1. Investigation and regulatory enforcement should be evidence-based and measurement-based. Deciding what to investigate and how to investigate 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 and 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 maximize 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 investigations 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.

Additional Definitions

1. In this part of Schedule 2, unless the context requires otherwise,
 - (a) “Board” means the board of directors of the Corporation;
 - (b) “IC” means investigations and compliance;
 - ~~(c) “ICC Coordinator” means an individual or such individual’s designate providing administrative assistance and support for the functions of the Compliance Committee and any hearings by the Compliance Committee;~~
 - (d) “in writing” means any permanent form including an electronic record, audiotape or a videotape and “written” has a corresponding meaning.
 - (e) “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 what disposition is appropriate in the public interest; and
 - (f) “Investigator” means a ~~person appointed under this Schedule 2 to conduct an investigation; and~~ a member of the Corporation’s compliance staff
 - ~~(g) “Manager of IC” means the Manager of Investigations and Compliance appointed by the Board and includes the person’s designate.~~

Commented [BH8]: The positions of “ICC Coordinator” and “Manager of IC” are confusing and, currently, do not exist. They are replaced with the more generic term “Investigator”

Investigations and Compliance Inquiries

2. Ontario One Call compliance staff may ~~The Manager of IC may appoint one or more Investigators to~~ investigate the conduct of a Member where,
 - (a) a complaint in writing has been made about a Member; or

Commented [BH9]: Removes concept of having to “appoint” ON1Call compliance staff each time they do their job

- (b) the ~~Manager of IC Investigator~~ has reasonable and probable grounds to believe that the Member has breached a term or condition of membership set out in this Schedule 2.

~~The appointment of the Investigator will, be in writing, will~~ briefly describe the matter under investigation ~~and will be produced upon request~~ to any person being asked to assist the Investigator.

3. An Investigator ~~appointed under this Schedule 2~~ will gather such information as the Investigator considers relevant and useful for the disposition of the matter and follows the best practices and processes established for Investigators under the Corporation's policies.
4. A Member will assist an Investigator ~~appointed under this Schedule 2~~, whether or not the Member is the subject of the investigation. The assistance will include:
- (a) providing access to all business premises of the Member and to the records to which the Member has access that may touch upon the matter under investigation;
 - (b) obtaining and providing the original or, if requested, copies of all documents that may touch upon the matter under investigation;
 - (c) permitting the Investigator to remove, after giving a receipt, a document or other article relevant to the matter for the purpose of making a copy on the basis that the Investigator will return either the original or a copy as soon as possible;
 - (d) answering questions asked by the Investigator that may touch upon the matter under investigation;
 - (e) directing all employees and persons acting under the direction of the Member to cooperate with the Investigator; and
 - (f) providing any oral or written consents that will assist the Investigator to obtain information from a third party.
5. ~~The Investigator will report the results of each investigation in writing to the Manager of IC,~~

Investigating a Matter

5. Before investigating a matter that has entered the complaints and compliance process, the ~~Manager of IC Investigator~~ will notify the Member in writing of the matter and give the Member ~~fifteen (15) seven (7)~~ Business Days to respond to the matter in writing. Notification of the matter does not require notification of the evidence relating to the matter. ~~Once the formal response has been required by the Investigator the matter is now part of the compliance process.~~

Commented [BH10]: Investigations, both formal and informal, and tracked and reported on, but there are not formal reports developed for each investigation unless it proceeds to a hearing

Commented [BH11]: Almost all of the matters investigated by ONICall are specific complaints which do not require lengthy reviews by members. Most are currently handled within one day

6. Alternatively, an Investigator may elect to send information to a member on an “information only” basis. This is not considered a formal request requiring a response within seven (7) business days, however the expectation is that the member will treat the matter with due seriousness and promptness. An Investigator may later require a formal response as outlined in the previous section.

~~7. The Manager of IC Investigatory may investigate a matter without appointing an Investigator under this Schedule 2 but must follow the best practices and processes established for Investigators under the Corporation’s policies.~~

8. After considering a matter that has entered the ~~complaints and~~ compliance process and any response in writing from the Member, the ~~Manager of IC 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 Member;
- (c) require the Member to complete successfully educational or other measures, including changing the Member’s internal processes as specified by the ~~Manager of IC Investigator~~ at the Member’s expense;
- (d) advise, caution or warn the Member in writing;
- (e) require the Member to appear before the ~~Manager of IC Investigator~~ or a person designated by the ~~Manager of IC Investigator~~, at a time and place specified by them, to be cautioned in person;
- (f) refer the matter to another body that could more appropriately deal with the matter which could include the Technical Standards and Safety Authority (TSSA), the Electrical Safety Authority (ESA) or the Ministry of Labour, or their successors, for appropriate action;
- (g) refer the matter to the Compliance Committee for a hearing;
- (h) take such action that the ~~Manager of IC Investigator~~ considers appropriate that is not inconsistent with the Act or the by-laws of the Corporation; or
- (i) engage a respected professional mediator to attempt to resolve a compliance matter involving a Member.

Failure to attend at a meeting before the ~~Manager of IC Investigator~~, when directed to do so under Section 8, will result in a breach of this Schedule 2. The ~~Manager of IC Investigator~~ ~~will~~ may refer such breach, together with the original matter, to the Compliance Committee for a hearing.

Commented [BH12]: This creates a clear “information only” matter which can be separate from a formal investigation. ONICall regularly receives inquires which do not rise to the level of complaint but still need to be actioned

9. A Member must comply with a decision or action taken by the ~~Manager of IC Investigator~~ under the previous Section. Where a Member disputes the appropriateness of a requirement under clause 8 (c) or 8 (h), the Member must file with the ~~Manager of IC Investigator~~ a written notice of dispute within fifteen (15) Business Days of the requirement being made, and the ~~Manager of IC Investigator~~ must refer the matter to the Compliance Committee for a hearing. In a referral under this Section, if the Compliance Committee finds that the Member has not breached a term of membership set out in Schedule 2 or the proposed requirement under clause 8 (c) or 8(h) was unwarranted, it may make an order requiring the Corporation to pay all or part of the Member's legal costs.

Other than for a decision made under clauses 8(f) and (g), the Manager of IC Investigator will deliver a copy of the written reasons for the Manager of IC Investigator's decision to the Member, any complainant and any other person whom the Manager of IC Investigator believes has a legitimate interest in them.

Compliance

11. The current Terms of Reference for the Compliance Committee are attached as Annex 1 to this Schedule for information.
12. The Board will not participate in any **specific** investigation or compliance review under this Schedule, except in relation to the participation of directors on the Appeals Committee.

NEW The Board may provide overall guidance to the Compliance Committee through written policies which must be approved by the Board via resolution.

13. The Compliance Committee will hear matters referred to it by the ~~Manager of IC Investigator~~.

~~14. The chair of the Compliance Committee or the person's designate will appoint a panel of a minimum of three members of the Compliance Committee to hear each matter referred to the Compliance Committee. Three members of the Compliance Committee constitute a quorum and one person on the Committee must be an independent representative of the Excavator's community and one person from the same subcategory as the Member who is the subject of the hearing.~~

15. The ~~Manager of IC Investigator~~ and the Member will be parties at the Compliance hearing.

16. No evidence is admissible at the hearing unless, in the case of the ~~Manager of IC Investigator~~, at least ~~thirty (30)~~ **twenty-one (21)** calendar days and, in the case of the other party or parties, at least ~~fifteen (15)~~ **fourteen (14)** calendar days before the commencement of the hearing, the party tendering the evidence has given such evidence to every other party:

- (a) in the case of written or documentary evidence, a copy of the evidence and, if requested, an opportunity to examine the original evidence;

Commented [BH13]: The Board has already established a compliance policy, but this would give it official status in the by-laws and ensure that it is followed by staff and the Compliance Committee

Commented [BH14]: Shortening timelines

- (b) in the case of evidence of a witness, the identity of the witness and a statement of the anticipated evidence of that witness;
- (c) in the case of evidence of an expert, the identity of the expert and a copy of the expert's written report containing the substance of the anticipated evidence of the expert; and
- (d) an opportunity to examine any real evidence or thing that will be tendered as evidence at the hearing.

The Compliance Committee may, in its discretion, allow the introduction of evidence that is inadmissible under this Schedule 2 and may make the directions it considers necessary to ensure that the other parties are not prejudiced.

- 17. The Compliance Committee may obtain legal advice from a lawyer independent of the parties.
- 18. The Corporation will notify the parties to a hearing by serving upon them a Notice of Hearing at least thirty calendar days before the commencement of the hearing **and coordinate the participation of both the responding members and Compliance Committee panel.** ~~The Corporation will give notice of upcoming hearings including notice of the identity of the Member and the subject matter of the hearing.~~ **The Notice of Hearing will include the time, date and location of the hearing.**
- 19. If the Compliance Committee concludes that the Member has breached a term or condition of membership set out in this Schedule 2, the Compliance Committee may, by order, do one or more of the following:
 - (a) direct the Member to appear, at the person's own expense, before the Compliance Committee or a person designated by the Compliance Committee to be reprimanded;
 - (b) direct that the Member comply with the specified terms or conditions of membership;
 - (c) direct that the Member pay an administrative monetary amount (AMA) not to exceed \$10,000 (see Section 28 below for ranges of financial sanctions), or if appropriate, suspend the requirement to pay such AMA for up to six (6) months from its imposition, and if the Member becomes compliant in the suspended period, cancel the AMA, if appropriate;
 - (d) direct that the Member be placed under probation for up to two years; while under probation the Member will be required, as requested by the Corporation, to show what they are doing to become compliant and, in addition, if an AMA was imposed on the Member for a breach and the Member either commits another breach or fails to become compliant in respect of a prior breach, the AMA for any subsequent breach will be increased to the next AMA level, **if applicable** (up to the maximum of \$10,000); and/or
 - (e) suspend certain of the Member's rights in the Corporation for a stated period, during which period of suspension, the Member will not be permitted to have its

Commented [BH15]: Clarifies that ON1Call will help with the coordination of hearings with both the Compliance Committee and the respondent

own representatives stand for nomination to the Board or serve on any committee of the Board.

20. A Member must comply with a direction or order made under the previous Section.
21. If a Member is found to have breached a term or condition of membership set out in this Schedule 2 during the period of probation (a "second finding"), the Member will be deemed to have breached probation contrary to this Schedule 2. The Compliance Committee dealing with a second finding will make an order or orders relating to both the second finding and to the breach of probation and the Compliance Committee will have all of the powers under this Schedule to deal with the breach of probation including the powers under Section 19, including the imposition of a further AMA or probation.
- ~~22. Parties are responsible for their own legal costs. Where the Compliance Committee is of the opinion that the referral to Compliance was unwarranted, it may make an order requiring the Corporation to pay all or part of the Member's legal costs.~~
- ~~23. Where the Compliance Committee concludes that the Member has breached a term or condition of membership set out in this Schedule 2, the Compliance Committee will make an order requiring the Member to pay such costs and expenses incurred investigating, prosecuting and hearing the matter (supported by detailed records and documentation) as the Compliance Committee considers appropriate, unless the Compliance Committee is of the opinion that such an order is not warranted.~~
- ~~24. Where a Member agrees or is ordered by the Compliance Committee to pay all or part of the costs and expenses incurred, the Member will pay them within thirty (30) calendar days of the order, unless the Manager of IC Investigator agrees to a longer payment schedule.~~
25. The Compliance Committee must give full and complete written reasons for its decisions.
26. The Investigator must deliver a copy of the written decision and reasons of the Compliance Committee to the Member, ~~the Manager of IC~~, any complainant and any other person that the Compliance Committee believes has a legitimate interest in them within thirty calendar days of each hearing.
27. The Investigator must prepare a summary of every **hearing** decision of the Compliance Committee. The summary will identify the Member if the Compliance Committee found that a contravention had occurred. A finding against a Member that a contravention occurred and the decision made by the Compliance Committee is public information.

Arbitration and Mediation

NEW As an alternative to the Compliance process described above, a matter under investigation may be dealt with by either arbitration or mediation if both the Investigator and Member involved agree. In that case, the Compliance Committee would suspend its proceedings, if any, and the following provisions would apply.

If the parties choose to proceed with arbitration, any dispute, controversy or claim arising out of or relating to the matter shall be referred to and finally resolved by arbitration under the Canadian Arbitration Association Arbitration Rules. The place of the

Commented [BH16]: Each party will be responsible for their own legal costs.

arbitration shall be in the City of Toronto, in the Province of Ontario or other location in Ontario agreed to by both parties. In addition:

- a) There shall be one arbitrator jointly selected by the Investigator and the Member.
- b) The arbitrator must select his or her award from one of the final offers made by each of the Parties, in its entirety and without modification. The arbitrator must provide detailed reasons for his or her award.
- c) An oral hearing need not be held.
- d) There will be no appeal from the decision of the arbitrator on questions of fact, law, or mixed fact and law.

Alternatively, the Investigator and the Member may choose to seek resolution of the matter in issue by mediation. In that case, they will jointly agree on a single mediator located in the City of Toronto, in the Province of Ontario or other location in Ontario agreed to by both parties, with experience in mediation and complete the agreement for mediation in substantially the form attached as Annex III or as otherwise may be agreed between the Investigator and the Member.

Failure by the Investigator and the Member to conclude a successful arbitration or mediation in respect of the matter in issue means that the Compliance Committee will again be seized of the matter and complete its deliberation and processes as set forth above.

Administrative Monetary Amounts (AMA)

28. In exercising its power under Section 19(c) of Part II of this Schedule 2 to impose an AMA on a Member, the Compliance Committee will use the following criteria in determining the amount of the AMA. The criteria will also include the nature and severity of the violation, the Member's past history of non-compliance, whether the non-compliance was inadvertent, intentional or caused by negligence or recklessness and if there was any economic gain to the Member.

~~In respect of Municipalities which under the Act are not required to become Members until June 19, 2014, the Corporation will not exercise its power to impose AMAs on any municipal Member until after June 19, 2015 thereby giving municipal Members a one year grace period.~~

Commented [BH17]: Deletes outdated language

For the purposes of this Section, the Compliance Committee must determine the amount of an AMA for a non-compliance issue in accordance with the following rules:

- (a) The Compliance Committee shall determine whether, in its opinion, the contravention had a major, moderate or minor adverse effect, or the potential to have such an adverse effect, on underground infrastructure, surrounding areas or people.
- (b) The ranges for the AMA are set out below in Column 2 of the Table with the levels set out in Column 1 and further described in Column 3.

- (c) The amount of the AMA for non-compliance is an amount selected by the Compliance Committee from within the range described in Column 2 for each level after considering the following criteria:
- (i) The extent to which the person who is non-compliant has mitigated the adverse effects of the non-compliance or the potential for the non-compliance to adversely affect underground infrastructure, surrounding areas or people.
 - (ii) Whether the person who is non-compliant has previously contravened any of the terms and conditions set forth in this Schedule 2 and if so, how many times and in what ways.
 - (iii) Whether the person who is non-compliant derived any economic benefit from the non-compliance and, if so, how much.

The following are the ranges of AMA that the Compliance Committee will have regard to in imposing AMAs on Members:

Level	Amount of AMA	Description
3	\$2,500 - \$10,000	for the most serious non-compliance issues resulting in a significant risk to public safety or financial or other potential harm to stakeholders, particularly in combination with ongoing or repeat contraventions and/or economic benefit from non-compliance
2	\$1,000 - \$5,000	for more serious non-compliance issues creating a risk to public safety or financial or other potential harm to stakeholders or where there has been past non-compliance
1	\$100 - \$2,000	for fairly minor non-compliance issues

\$10,000 is the maximum fine for any matter referred to the Committee, even if it contains multiple instances of non-compliance.

Commented [BH18]: Clarifies that the maximum fine for a single case is \$10,000. Removes possibility that a member could be fined repeatedly for the same offence within a single hearing

Appeals

29. The current Terms of Reference for the Appeals Committee are attached as Annex II to this Schedule 2 for information.

30. A Member who has been found to be non-compliant and who wishes to appeal a decision of the Compliance Committee may do so by filing, in writing, a request to the ~~Secretary of the Committee for the Appeals Committee~~ Chair of the Board of the Corporation to review the matter. Such an appeal must be filed within thirty (30) calendar days of receiving the written decision of the Compliance Committee. The party must explain in writing the material grounds for the appeal and why the original decision should be modified. Those grounds may include a question of fact, of law or a mixed question of fact and law.
31. The Compliance Committee must provide to the Appeals Committee a copy of the documents and information on which the Compliance Committee's decision was based and any response to the submissions of the person appealing within thirty (30) calendar days of the filing of the appeal.
32. The Appeals Committee must, in the absence of the person appealing and the Compliance Committee, consider the material submitted to it, deliver its decisions and reasons in writing to the person appealing and to the Compliance Committee.
33. The decision of the Appeals Committee of the Corporation is final and binding and the Member affected by the decision cannot and will not seek to appeal or challenge the decision.
34. Decisions of the Appeals Committee will be posted on the Corporation's website.

Court Actions

35. Failure of a Member to comply with Section 19 of Part II of this Schedule 2 and in particular to pay an AMA levied under Section 19(c) by the Compliance Committee may result in the Corporation pursuing the non-compliance by the Member in the Ontario Superior Court to the *Courts of Justice Act* (Ontario), as amended from time to time.
36. The laws of the Province of Ontario will apply to the interpretation of this Schedule 2.

Annex I
ONTARIO ONE CALL
COMPLIANCE COMMITTEE
Terms of Reference

Role	To use the powers contained within the <i>Ontario Underground Infrastructure Notification System Act</i> and its regulations (the “Act”) as may be amended from time to time to ensure broad compliance with the requirements of the Act by Members of Ontario One Call and by excavators.
Responsibilities	<ul style="list-style-type: none"> • understanding the requirements of the Act and its powers to enforce compliance • communicating to Members and excavators on an ongoing basis around expectations and areas of concern; the objective is a “no surprises” approach to enforcement • a clear, written and escalating means of informing Members or excavators about their non-compliance and the resulting enforcement actions with appropriate policies articulating same • a focus on using the powers under the Act to leverage consistent compliance, ahead of using the powers in a punitive manner • following the direction of the Board to examine areas of particular concern to the broader stakeholders of Ontario One Call • determining with other enforcement agencies areas of overlapping and individual jurisdiction so that Members and excavators do not suffer undue investigations by multiple parties for the same matter or issue • ensuring that Members and excavators are provided the opportunity to review evidence that the Committee will consider, and provide information regarding the matter under consideration before the Committee reviews the matter formally. Members may appear before the

Commented [BH19]: These are matters currently handled by staff. The focus of the Compliance Committee will be on hearings

Commented [BH20]: Matter currently handled by staff

Committee, in person or in writing

- conducting hearings into non-compliance by Members
- avoiding any possible conflicts of interests with compliance activities.

Membership and Voting Voting Members:

The Board of Directors shall approve and maintain a list of arbitrators, mediators or other legal professionals who are knowledgeable in the Act and its regulations and who will constitute the members of the Compliance Committee. Minimum membership shall be three.

The Board of Directors shall designate one member of the Committee as Chair, and another as Vice-Chair who may fulfil the duties of the Chair in their absence.

As much as possible, the members of the committee shall have varied backgrounds which touch upon issues of construction, regulatory law and compliance actions.

If a matter has been referred to the Compliance Committee jointly by the Investigator and Member for binding arbitration, then the matter will be heard by a minimum of one and a maximum of three members of the committee.

If the matter has been referred to the Compliance Committee by the Investigator for a hearing, the matter will be heard by three members of the committee.

~~One (1) voting representative from each of the following subcategories of Members or Non-Members with appropriate competencies are to be the persons appointed from time to time to the Compliance Committee:~~

- ~~Municipalities and Government~~
- ~~Gas and Oil Pipeline~~
- Electricity
- ~~Telecommunications and Cable~~
- Other
- ~~Excavator Community (non-member category)~~

Commented [BH21]: This change would create an impartial panel of legal experts to hear compliance matters. It would replace the current model which relies on a mix of member and excavator representatives.

This change will help ON1Call meet the high level of professionalism expected in delivering on our compliance mandate. It would also remove the challenges of conflicts of interest due to members who are not in compliance being asked to sit in judgement of other members.

Members would still be able to appeal decisions of the Compliance Committee to the Appeals Committee, which is a subset of the Board. This would include representation from members (including an Board Member from the same sector as the member) and excavator representatives.

~~The voting members of the Committee shall be selected by a vote of the full Board, after an invitation from the Chair of the Board for members to stand for the Committee.~~

~~No Member on this Committee shall at the same time be a director on the Board of Ontario One Call.~~

~~If there is a conflict of interest with a Committee member, they may be replaced by an alternate from the same sector for the purposes of that item.~~

Non-Voting Member

- A staff member of Ontario One Call, as determined by its Executive Director, shall serve as the Secretary of the Committee ~~and be a non-voting member.~~

Chair

The Board of Directors shall designate one member of the Committee as Chair, and another as Vice-Chair who may fulfil the duties of the Chair in their absence.

Frequency of Meetings

Meetings shall be held ~~monthly, or more or less frequently~~ at the

Commented [BH22]: The Board will determine who will fill the Chair and Vice-Chair positions. Those people would be responsible for coordinating matters in conjunction with ON1Call staff.

and Manner of Call discretion of the Chair. They may be conducted by teleconference.

If a matter has been referred to the Compliance Committee jointly by the Investigator and Member for binding arbitration, then the matter will be heard by a minimum of one and a maximum of three members of the committee.

If the matter has been referred to the Compliance Committee by the Investigator for a hearing, the matter will be heard by three members of the committee.

**Quorum
Resources**

The Secretary of the Compliance Committee ~~who will be the Manager of Investigations and Compliance~~ will assist the Compliance Committee as a resource and support. Other resources to the Committee will include the Ontario One Call staff and legal counsel, as necessary.

Commented [BH23]: Establishes that three members of the Compliance Committee will conduct hearings. However, anywhere between one to three Committee members can participate in an arbitration

Reporting

- reporting by the Committee to the Board shall occur within a reasonable period after each meeting of the Committee
- ~~minutes of the Committee meetings must be kept~~
- ~~decisions of the Committee will be available to the Members of Ontario One Call and members of the public (in the case of a finding of breach against a Member).~~

There is no set term of office. The Board of Directors will review the members of the Committee on at least an annual basis and will revise the membership as required in their judgement.

Term of Office

~~The term of office for Compliance Committee members is two (2) years and each voting member is eligible for re-appointment for one additional two (2) year term.~~
~~In the event of the death, resignation or removal of a Compliance Committee member or inability to serve because of ill health, the Board shall appoint a replacement to the Committee.~~

Date of Last Review xxx

Annex II
ONTARIO ONE CALL
APPEALS COMMITTEE
Terms of Reference

Role	To hear appeals from the decisions of the Compliance Committee of Ontario One Call and to render decisions thereon.
Responsibilities	<ul style="list-style-type: none"> • conduct a fair and independent review of decisions of the Compliance Committee as required • permit submissions in writing and orally by the person appealing the decision of the Compliance Committee and by the Compliance Committee • provide written reasons for its decisions after such review
Membership and Voting	<p>Voting members:</p> <ul style="list-style-type: none"> • 3 Directors from the Board are to be the persons appointed from time to time to the Appeals Committee. No more than one of the three Members can be from the same subcategory of Members that the Member whose appeal is being heard is from and one of the three Members must be from that same subcategory. <p>Non-voting member:</p> <ul style="list-style-type: none"> • Secretary of the Board
Chair	The Chair of the Appeals Committee will be chosen from the membership of the Appeals Committee by a vote of all Committee members.
Secretary	The Secretary of the Board will be the secretary for the Committee.
Frequency of Meetings and Manner of Call	The Appeals Committee will meet as required to hear appeals from decisions of the Compliance Committee and at least once annually. Meetings of the Appeals Committee can be called by the Chair of the Board on at least seven (7) calendar days prior notice.
Quorum	A majority of the voting members of the Appeals Committee constitutes a quorum of the Committee (minimum of 2 voting members). As well, one (but not more than one) member of the Appeals Committee quorum at any hearing of an appeal must be from the same subcategory of Membership as the Member whose appeal is to be heard.

Hearings	The decision of the majority of the Appeals Committee in respect of an appeal is the decision made on an appeal.
Resources	The Appeals Committee can utilize such resources as it believes are required, including outside legal counsel to assist in conducting fair and independent appeals.
Reporting	• to the Board annually • to the Board after the conclusion of each appeal
Date of Last Review	February 10, 2014

Commented [BH24]: The Appeals Committee only meets for the purpose of hearing an appeal, and thus would update the Board once an appeal is completed