

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: April 16, 2026

CASE NO(S): OLT-26-000091

PROCEEDING COMMENCED UNDER subsection 17.3 of the *Ontario Underground Infrastructure Notification System Act*, 2012, S.O. 2012, c. 4

Appellant:	Mountview Services Inc.
Assessor:	Ontario One Call
Description:	Order of Administrative Penalty
Property Address:	235 Tartan Avenue
Municipality/UT:	Kitchener/Waterloo
OLT Case No.:	OLT-26-000091
OLT Lead Case No.:	OLT-26-000091
OLT Case Name:	Mountview Services Inc. v. Ontario One Call

Heard: April 2, 2026 by Video Hearing

APPEARANCES:

<u>Parties</u>	<u>Counsel/Representative*</u>
Mountview Services Inc.	Kevin Smith*
Ontario One Call	Lisa Constantine

DECISION DELIVERED BY S. TOUSAW AND ORDER OF THE TRIBUNAL

[Link to Order](#)

INTRODUCTION

[1] Ontario One Call is the aptly named service to builders, landscapers, municipalities, and property owners for locating buried infrastructure before ground

disturbance begins. The industry calls this action a “Locate” where paint and/or flags, accompanied by written information and safety instructions, identify the location of below-grade water, sewer, gas, electrical, internet and other infrastructure. Ontario One Call’s primary goals include worker and public safety and the avoidance of service disruption.

[2] Obtaining a Locate before digging is not optional: it is the law under the *Ontario Underground Infrastructure Notification System Act* (“Act”). Non-compliance can lead to a Penalty and the right to appeal to this Tribunal.

[3] This matter is the first case to be heard by the Tribunal under this Act.

[4] For the reasons that follow, the Tribunal finds that the appeal of Mountview Services Inc. (“Mountview” / “Appellant”) is denied, and the Administrative Penalty issued by Ontario One Call (“One Call”) is warranted, in the amount of \$10,000 as mandated by Ontario Regulation 87/23 (“Regulation”).

ARTIFICIAL INTELLIGENCE (“AI”)

[5] Effective March 30, 2026, the Tribunal’s [Artificial Intelligence Practice Direction](#) came into effect. This Practice Direction requires a party, participant, or witness to include a declaration within each submitted document if generative AI was used to create content.

[6] The Parties had confirmed by email prior to this Hearing as follows: One Call did not utilize AI in the preparation of its evidence and submissions; and Mountview did utilize AI to help review its filed information. Mountview was represented by its Construction Manager, Kevin Smith, who was involved with the events leading to this appeal and had filed written materials.

[7] No substantial concern was voiced by One Call. The Tribunal ruled that it would allow the Appellant's filed materials and written submissions, subject to allowing One Call to question Mr. Smith on any alleged facts and positions, and hearing submissions related to the weight to be assigned.

[8] Throughout the Hearing and submissions, no issues were raised related to AI usage.

PARTY POSITIONS

[9] Mountview acknowledges that it failed to request a Locate for its excavations on October 16, 2025. However, it argues that the resulting Administrative Penalty should be weighed against the facts to determine what is fair, proportionate and consistent with the purpose of the Act. Mountview suggests that it has achieved compliance through its actions following the incident, such that a maximum Penalty is not necessary to achieve the Act's intention to promote compliance and to prevent economic benefit from non-compliance.

[10] Mountview emphasizes that the event involved manual digging using shovels to a shallow depth for tree planting, which resulted in no damage to infrastructure and no safety incident. Such activity creates much lower risk than mechanical excavation. Mountview argues that One Call's absence of considering the risk or outcome of the activity results in a disproportionate and unreasonable Penalty. Future deterrence by a maximum Penalty is unwarranted given that Mountview has acknowledged its misunderstanding, cooperated throughout the Investigation, and improved its internal operating procedures.

[11] Mountview argues that the Tribunal may vary a Penalty to ensure it is fair, reasonable and proportionate. The Tribunal's authority to revoke a Penalty must also give it authority to assess whether the maximum Penalty is justified. Mountview requests the Tribunal to reduce or revoke the Penalty imposed by One Call.

[12] In response, One Call submits that the \$10,000 Penalty is prescribed by the Regulation and cannot be varied. The Act assigns “absolute liability” where an Administrative Penalty is imposed, such that “*an honest and reasonable belief in a mistaken set of facts*” is expressly excluded as a defence (s. 17.2(7)(b) of the Act). This Penalty for digging without Locates was issued for non-compliance after Mountview was previously notified about the need for Locates whenever soil is being disturbed.

[13] One Call argues that the Tribunal is bound by the Act and Regulation when exercising its authority to impose a Penalty. Without a specific Regulation granting additional authority to the Tribunal, the prescribed relevant Penalty must be applied. In support of its position, One Call cites various cases, including *1386146 Ont. Inc. v. 2520650 Ont. Inc. et al.*, 2022 ONSC 5277 at para. 23, where the Divisional Court stated:

When reviewing a statute to determine the jurisdiction of the Tribunal, the words of the governing legislation are to be read in their entire context and in their grammatical and ordinary sense. They are to be interpreted harmoniously with the scheme of the legislation, the object of the legislation, and the intention of Parliament.

[14] Of relevance to varying a Penalty, One Call refers to *Agra Real Estate Ltd. v. Ontario (Superintendent Financial Services)*, 2010 ONFST 15, where the Financial Services Tribunal found, based on a similar Regulation to the present case, that:

... Ontario Regulation 193/08 provides fixed penalties for the purpose of summary administrative penalties imposed ...

[15] Thus, One Call posits that, if the Tribunal finds that an infraction occurred that warrants a Penalty, it must apply the Penalty set out in the Regulation. In summary, Mountview admits to the digging without a Locate; its claim of being mistaken is of no relevance; and the Regulated Penalty cannot be altered.

CONTEXTUAL FACTS

[16] The Tribunal finds the following facts, on the largely undisputed elements from the Parties:

- This case arises from Mountview's appeal (Ex. 2) against One Call's Administrative Penalty of \$10,000 for Mountview's failure to obtain Locates for excavations conducted on October 16, 2025, in the area of 235 Tartan Avenue, Kitchener (Ex. 1).
- Earlier, on June 12, 2025, Mountview did not request or obtain a Locate in the area of 205 Tartan Avenue, Kitchener, prior to shallow digging to remove and replace grassed sod. One Call emailed a "Notice of Investigation" to Mountview on June 20, 2025. On October 21, 2025, One Call issued a "Warning Letter" and did not levy a Penalty (Ex. 3, p. 72).
- On October 16, 2025, Mountview did not obtain a Locate in the area of 235 Tartan Avenue, Kitchener, prior to excavating to replace certain previously planted trees. One Call emailed a "Notice of Investigation" to Mountview on November 17, 2025. On November 24, 2025, One Call issued a "Letter of Intent to Impose an Order of Administrative Penalty." Following further review of Mountview's response, One Call issued an "Order of Administrative Penalty" on January 13, 2026, levying a Penalty of \$10,000 (Ex. 1).
- Mountview is an experienced landscaper, is aware of and endeavours to comply with One Call's requirements, and admits to not requesting Locates for its work on October 16, 2025.
- The general term "ground disturbance" is used in One Call's practice to describe activities such as digging and excavating.

ISSUE AND FINDINGS

[17] Under the Act, the Tribunal finds for One Call that, should a Penalty be imposed, the amount is fixed by the Regulation and cannot be altered. While a reduced Penalty is requested by Mountview, it provided no substantive legal argument on how such reduction could be authorized.

[18] On a plain reading of the Act, the Tribunal finds that s. 17.2(1) enables the choice of whether a Penalty will be imposed, but if a Penalty is rendered, the amount is fixed by the Regulation (emphasis added):

17.2(1) An assessor may, by order, impose an administrative penalty against a member or excavator in accordance with this section and the regulations made by the Minister ...

[19] Section 21(h)(i) of the Act enables the Minister to make regulations:

(h) governing administrative penalties that an assessor may order and all matters necessary and incidental to the administration of a system of administrative penalties, including,

(i) specifying the amount of an administrative penalty or providing for the determination of the amount of an administrative penalty by specifying the method of calculating the amount and the criteria to be considered in determining the amount.

[20] Section 2 of the Regulation stipulates that:

2(1) The amount of the administrative penalty for a contravention of a provision set out in Column 1 of Table 1 is the amount set out opposite the provision in Column 2.

[21] Item 6 in Table 1 of the Regulation sets out the Penalty for failure to obtain a Locate under s. 10(1) of the Act:

6.	Subsection 10(1) (Commencement of excavation or dig)	\$10,000
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[22] One Call implements the Act and Regulation through its *Rules for Underground Infrastructure Owners and Excavators* ("Rules"). Rule 24 prohibits excavation unless: a Locate Request is submitted; each infrastructure owner/operator has provided its

Locate or clearance; and the excavator ensures that the Locate markings align with the associated written information (Ex. 3, p. 29). Rule 56 enables the imposition of an Administrative Penalty in accordance with the Regulation and the Administrative Penalty Policy ("Policy") (Ex. 3, p. 43). Policy 8 enables a Penalty as listed in Schedule A to the Policy and in the Regulation (Ex. 3, p. 52), both of which specify \$10,000.

[23] Under s. 17.3(3) of the Act, the Tribunal sits in place of the Assessor, and "*may, by order, confirm, revoke or vary the assessor's order.*" The Tribunal accepts One Call's position that the reference to "vary" would apply, for example, to where several alleged infractions resulted in a Penalty, but the Tribunal found that some did not meet the criteria to constitute an infraction. In such case, the total Penalty would be reduced by the Penalties in the Regulation which were found not warranted.

[24] In the present case, Mountview is subject to only one Penalty at a rate fixed by the Regulation. Such fact limits the remaining question to: do Mountview's actions warrant a Penalty? The Tribunal finds in the affirmative.

[25] Mr. Smith, while accepting that a Locate was required, requested that fairness be considered given that he misunderstood at the time the necessity for a Locate when replacing already-planted trees. They used only hand shovels with very minimal risk for utility damage, as evidenced by none occurring. Mr. Smith asks the Tribunal to find that it has authority to reduce a Penalty for a low-risk offence. Mr. Smith suggests that education is necessary, rather than a Penalty, to inform all landscapers on compliance and to prevent future offences. In cross-examination, Mr. Smith acknowledged, fairly, that he was unaware before June 2025 that minor ground disturbance required Locates. He had obtained Locates for construction activities, but not for near-surface landscape work. Mr. Smith explained that although a Locate is required for planting trees, this event was replacing trees, with only hand shovels in already disturbed soil. Nevertheless, Mr. Smith accepts that such activity amounts to excavation.

[26] Ryan McAfee, Head of Compliance for One Call, advises that Locates are effective for only 60 days given that markings may not remain visible and new or

relocated infrastructure could be installed in the intervening time. With reference to s. 17.2(7) of the Act, Mr. McAfee explains that a good faith misunderstanding still invokes the mandatory penalty. A claim of innocence is not a defence. Mr. McAfee considers the activity of removing and replacing a tree to constitute ground disturbance given the use of an excavator (to extract the original tree) and shovels (to remove soil).

[27] Chris Brennan is a Utilities Locator for the City of Kitchener who witnessed both of the alleged infractions of Mountview. At the first occurrence, Mr. Brennan advised that he explained fully to Mr. Smith on the necessity and reasons for obtaining a Locate for the observed ground disturbance. Mr. Brennan explained to the Tribunal that Locates avoid substantial harm, including potential fatalities, drinking water contamination, flooding, or preventing a homeowner's 911 call. Gas and water lines can be close to the surface, such as at shut-off valves or where road grading has changed, and a neighbour's services might cross adjacent properties. A hand shovel is capable of damaging a gas line.

[28] As noted by Lucas Singh, Compliance Investigator with One Call, in the email exchange during the first Investigation, Mr. Smith advised that he "*will ensure that Locates are completed for any type of excavation, including the planting of plant materials.*" Mountview's admission of its mistake, a commitment to it not recurring, and this being a first offence, were factors in One Call's decision to issue a Warning rather than a Penalty. While the Warning Letter for the first event was not issued until after the second event, to which this Hearing relates, Mr. Singh explained that Mountview's receipt of the first Notice of Investigation and Mr. Smith's commitments arising therefrom, demonstrated full awareness of the need for Locates for any ground disturbance when landscaping.

[29] Brent Dawes, Investigator with One Call, advised that Mr. Smith's email responses during this second incident made no mention of the prior Investigation and Mountview's commitments arising therefrom. In addition, One Call has no record of a request for Locate for the tree plantings in this parkland. To the Tribunal's question on the ability to vary the Penalty amount, as requested by Mountview, Mr. Dawes

explained that the amounts were fixed in the Regulation based on the nature of the offence.

[30] Mountview acknowledges that it failed to obtain a Locate when it replaced trees within the parkland. However, despite also acknowledging its learnings from the Notice of Investigation a few months earlier, and its efforts to enhance its in-house operating procedures, Mountview also attests that it felt a simple replacement of a tree, without further excavation below the removed root ball, would bear no risk to infrastructure and not require a Locate.

[31] The Tribunal finds that the Administrative Penalty is warranted. A fair approach has been implemented by One Call whereby Mountview's first offence was considered a learning opportunity and limited to a Warning. Mountview expressed its commitment to not proceed without a Locate in future for "*any type of excavation, including the planting of plant materials*" (Ex. 3, p. 64). Despite Mountview's rationale that tree replacement is different and that no safety issue arose, the Tribunal is unable to accept that Mountview would not consider tree replacement as a "planting" and in essentially the same setting and location as the first offence.

[32] Mountview is a long-established and experienced landscape company that has requested Locates on many occasions, albeit for larger excavations. With such experience and practice, the occurrence of this failure to obtain a Locate, after the recent infraction pertaining to landscaping, is found to be unreasonable. Mountview pledged its learnings in the first instance and has essentially offered the same rationale to avoid a Penalty for this second instance.

[33] The Tribunal finds One Call's conclusions leading to the prescribed Penalty to be fair, reasonable and warranted.

ORDER**[34] THE TRIBUNAL ORDERS THAT:**

- the appeal of Mountview Services Inc. is dismissed; and
- the Ontario One Call Assessor's Order of Administrative Penalty is confirmed.

"S. Tousaw"

S. TOUSAW
VICE CHAIR

Ontario Land Tribunal

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