

DISPUTE RESOLUTION POLICY

KEY FEATURES:

- The Policy creates a framework to work collaboratively to resolve disputes and where necessary, a fair mechanism to achieve final and binding resolutions.
- Members, Excavators and Ontario One Call may initiate Dispute Resolution in accordance with this Policy where permitted by the Ontario One Call Rules.
- Requests for dispute resolution must be submitted in writing.
- This policy does not apply to appeal from Administrative Penalty Orders.

I. Overview

1. This Policy provides guidance to Members and Excavators regarding Dispute Resolution in circumstances where Dispute Resolution is permitted by the Ontario One Call Rules (the “Rules”).
2. For any dispute arising from an Administrative Penalty Order, the sole recourse is the appeal procedure in section 17.3 of the *Ontario Underground Infrastructure Notification System Act*. For greater certainty, this Policy does not apply to Administrative Penalties.
3. Capitalized terms have the same meanings as provided in the Rules.
4. Nothing in this Policy limits Ontario One Call’s ability to undertake any of the actions provided in the Act or Rules.
5. Commencing a Dispute does not change or suspend a Member or Excavator’s obligation under the Act or Rules.

II. Purpose

6. Ontario One Call, Excavators and Members share a common interest in promoting safety and efficiency with respect to Locates for Members’ underground infrastructure.
7. Despite this, disagreements may arise from time to time. It is important to have a fair process to address disputes in a timely manner, minimizing the impact to stakeholders’ organizational operations.
8. This Policy sets out the way disputes will be addressed in a manner that balances:
 - administrative efficiency;
 - fairness;
 - cost to the affected Member/Excavator and/or Ontario One Call, and
 - finality

III. Scope

9. If:

- (a) a Member or Excavator is aggrieved by the outcome of Ontario One Call's Complaints process or Compliance Investigation; or
- (b) Ontario One Call is not satisfied that the Member or Excavator has implemented its directions under Parts IX and X of the Rules,

(collectively, the "**Aggrieved Party**"),

this Policy applies.

IV. Policy

10. Where the Aggrieved Party:

- (a) is a Member, this Policy provides two distinct options ("**Option 1**" or "**Option 2**") for Dispute Resolution, either of which (but not both) can be activated by the Member; or
- (b) is an Excavator (who is not also a Member) or Ontario One Call, Dispute Resolution will proceed in accordance with Option 2.

(a) Option 1: Court Application Pursuant to Section 191 of the Not-For-Profit Corporations Act where the Aggrieved Party is a Member

11. Where a Compliance Investigation results in one or more of the following outcomes:

- (a) "Refer Elsewhere";
- (b) require the Member to "Change Internal Processes"; or
- (c) issue a "Reprimand" to the Member

(collectively, "**Disciplinary Action**"),

the Member:

- (i) may, but is not required to, request a management discussion in accordance with Option 2, Steps 1 and 2, within 10 Calendar Days of receiving Ontario One Call's decision by emailing Dispute@OntarioOneCall.ca to try to resolve the Dispute, before proceeding with a Court Application; and
- (ii) may, within 60 Calendar Days of receiving Ontario One Call's decision, at first instance or following a management discussion, make an application to the Court in accordance with sections 51(5) and 191 of the *Not-For-Profit Corporations Act*, S.O. 2010, Ch. 15.

(b) Option 2: Private Dispute Resolution where the Aggrieved Party is a Member, an Excavator or Ontario One Call

(i) Step 1: Notice of Dispute

12. Within 10 Calendar Days of receiving Ontario One Call's decision following a Compliance Investigation, an Aggrieved Party may initiate a Dispute Resolution:

(a) In the case of:

- (i) a Member or Excavator, by sending an email to Dispute@OntarioOneCall.ca with the subject line "Notice of Dispute," Case ID #, and the Member's name,
- (ii) Ontario One Call, by sending an email to the Member or Excavator with the subject line "Notice of Dispute"

(collectively, a "**Notice of Dispute**"), and

(b) by summarizing the nature of the Dispute, the key facts, attaching the key documents and describing the outcome sought by the Aggrieved Party.

(ii) Step 2: Management Discussion

13. Within 10 Calendar Days of receiving the Notice of Dispute, Ontario One Call will arrange for a management meeting with the Member or Excavator.

14. Management representatives of the parties will utilize their best efforts to meet within 10 Calendar Days of the Notice of Dispute. The purpose of the meeting is to attempt to resolve the Dispute.

15. Within 10 Calendar Days of the Management Discussion, the parties will determine whether the Dispute is resolved.

16. If the Member/Excavator does not attend the management discussion, Ontario One Call may close the Dispute and decline to take any further action in relation to the Dispute.

(iii) Step 3: Arbitration

17. If the Aggrieved Party:

- (a) has issues that remain unresolved following the Management Discussion; and
- (b) wishes to pursue the matter,

the Aggrieved Party must undertake the following actions in paragraphs (i), (ii) and (iii) within 10 Calendar Days of the completion of the Management Discussion in order for the Dispute to proceed.

(i) In the case of:

a. a Member or Excavator:

- i. send an email to Dispute@OntarioOneCall.ca with the subject line "Arbitration," the Case ID #, and
- ii. by courier or regular mail, provide a cheque from the Member/Excavator, payable to Ontario One Call, in the amount of \$2,500 (a "**Deposit Cheque**"), which will be held by Ontario One Call and will be used to defray the first \$2,500 of the Member/Excavator's share of the Arbitrator's fees or returned to the Member/Excavator if it abandons the Arbitration before any fees are incurred by the Arbitrator,

b. Ontario One Call, send an email to the Member/Excavator with the subject line "Arbitration"

(collectively, a "**Notice to Arbitrate**"),

- (ii) summarize the concerns which remain outstanding following the Management Discussion;
- (iii) provide all documentation in support of the concerns and such other information or documentation requested by Ontario One Call.

18. For Arbitration:

- (a) Within 10 Calendar Days of receipt of the Aggrieved Party's Notice to Arbitrate, the parties shall jointly agree upon an Arbitrator, where that Arbitrator shall be selected from the roster of arbitrators at ADR Chambers, Toronto.¹
- (b) Unless the parties and the Arbitrator agree otherwise, an Arbitration lasting no more than one day shall be scheduled to take place on a mutually convenient date that is not later than 2 months from the date of the Notice to Arbitrate and shall be conducted in Toronto.
- (c) The parties to the Arbitration shall divide the time equally to present their positions to the Arbitrator.
- (d) The Arbitration shall be governed by the Ontario *Arbitration Act, 1991* and the then-current ADR Chambers Rules with respect to expedited arbitrations,² except

¹ If the parties cannot jointly agree on an Arbitrator, each party to the Arbitration shall jointly submit two names of potential arbitrators from the ADR Chambers roster, and the identity of the Arbitrator shall be chosen randomly during a video meeting between the parties or their counsel from the four possible names.

² <https://adrchambers.com/wp-content/uploads/2017/11/2017-03-29-Expedited-Arbitration-Rules.pdf>, as may be amended from time to time.

where the ADR Chambers Rules conflict with the Ontario One Call Rules, in which case the Ontario One Call Rules, including this Policy, shall prevail.

- (e) In accordance with the ADR Chambers expedited arbitration rules, the parties shall each be entitled to:
 - (i) call witnesses under oath, examine, cross-examine and re-examine witnesses;
 - (ii) make submissions to the Arbitrator; and
 - (iii) submit documentary and other evidence to the Arbitrator.
 - (f) The Arbitrator shall render a decision, in writing, addressing all matters in Dispute between the parties. In rendering the decision, the Arbitrator shall have regard to the Act and applicable regulations, Ontario One Call by-laws (if applicable), and the Ontario One Call Rules and Policies, each as may be amended or replaced from time to time.
 - (g) The decision of the Arbitrator shall be final and binding on the parties to the Arbitration. Neither party shall have a right of appeal or review pursuant to the *Arbitration Act, 1991* or by judicial review under the *Judicial Review Procedure Act*. In particular, without limiting the generality of the foregoing, the Court has no jurisdiction to hear an appeal or a judicial review from the Arbitrator's decision with respect to any issue, including jurisdiction.
 - (h) Each party shall bear its own costs of the Arbitration, regardless of the outcome. The Arbitrator's fees shall be split equally between the parties, regardless of the outcome, with the first \$2,500 of the Member/Excavator's share being covered by the Member/Excavator's Deposit Cheque. The Arbitrator shall have no jurisdiction to award costs in favour of one party or the other party.
 - (i) The Arbitrator's decision may be entered and enforced as an order of the Court pursuant to the *Arbitration Act, 1991*, on the application of either party to the Arbitration.
19. If the Aggrieved Party does not pursue dispute resolution within the timeframes outlined in this Policy, Ontario One Call may close the Dispute and decline to take any further action in relation to the Dispute.