

By-Law Review Consultation

September 30, 2020



Timelines

- ▶ **September 30** - Member Consultation Meeting via webinar
- ▶ **September 30 to October 16** - Stakeholders are asked to provide written feedback on the recommended changes to cofficer@on1call.com
- ▶ **October 19** - Board of Directors meet to review feedback for consideration and approve final proposals
- ▶ **November 5** - Special Members Meeting to vote on the recommended changes

Why is ON1Call Reviewing its By-Laws?

- ▶ The original by-laws were established in 2014, and carried over much of the original language from the original voluntary system created in 1996
- ▶ Accordingly, many of the concepts and terms in the by-laws are outdated
- ▶ The Board of Directors wishes to modernize the compliance aspects of the by-laws to improve their clarity and efficacy
- ▶ As a best practice, not-for-profit organizations should review their by-laws on a regular basis. A review every five years is a common standard

What should be included in by-laws?

- ▶ By-laws describe the governance of an organization
 - ▶ Who constitutes the members of the organization
 - ▶ How the Board of Directors will be formed, its roles and responsibilities
 - ▶ How meetings of members are conducted
- ▶ It is not meant to be the operating manual of the organization
 - ▶ The Board of Directors establish strategic direction, scorecard metrics and provide overall governance
 - ▶ Staff are responsible for delivering on the strategic direction and the overall delivery of services
 - ▶ Members work with staff on operational matters and participate in committees, members meetings and consultations

Limitations of By-Law Changes

- ▶ By-law changes must not contradict provincial legislation, in particular the *Ontario Underground Infrastructure Notification System Act, 2012*
 - ▶ Concepts like mandatory membership, five business day locates, etc., are defined in legislation
- ▶ Any changes to Schedule 2, By-Law 2 must be approved (after member adaptation) via regulation by the provincial government

By-Law 2: Proposed Changes

- ▶ References to “legacy members” deleted
- ▶ References to Schedule 4 deleted
- ▶ Removes scenario where auditor could be a director, officer or employee of the Corporation
- ▶ Weighting of votes is simplified - the votes of the members will be pro-rated within their membership categories. Before it was “winner take all” so if 60% of telecom members voted “yes” on a matter and 40% “no,” then 100% of telecom votes would be cast for “yes”. Now their votes will be divided 60/40
- ▶ Notice of Special Members Meetings reduced from 45 days to 30 days

By-Law 2: Proposed Changes (con't)

- ▶ An additional Board seat is added for a third excavator representative. Board membership increases to 16
- ▶ The Chair, Vice-Chair and Treasurer must all be different people
- ▶ Reference to Chair as “public spokesperson” is deleted
- ▶ Requirement that Vice-Chair be from member category deleted

By-Law 2, Schedule 1: Proposed Changes

- ▶ “Bill of Rights for Members” is deleted in its entirety
- ▶ Most of the rights described are already included in By-Law 2, including right to attend the AGM, put forward candidates for the Board and vote on directors
- ▶ What’s left in Schedule 1 is mainly general statements of intent. The by-laws should be reserved for the governance of the Corporation

By-Law 2, Schedule 2: Proposed Changes

- ▶ Members have no control or ownership of ON1Call website and social media platforms
- ▶ Feedback 360 reporting requirement now three days, instead of three to five days
- ▶ Fee schedule changes need to be approved by a majority of members, not two-thirds majority
- ▶ References to Schedule 4 removed
- ▶ “ICC Coordinator” and “Manager of IC” references simplified to “Investigator”. Removes need to appoint an investigator for each matter
- ▶ Reduces response time for members on complaints from 15 days to seven days
- ▶ Provides clarity between “formal” and “informal” complaints

By-Law 2, Schedule 2: Proposed Changes (con't)

- ▶ New requirement for members to provide data to ON1Call to help the Corporation fulfil its objectives under the Act. This would allow for mandatory participation in DIRT report
- ▶ For a hearing, disclosure of information in advance of hearing moves from 30 days (investigator) and 15 days (member) to 21 days and 14 days respectively. ON1Call provides 30 days notice of hearing and is responsible for arranging attendance of Compliance Committee and members
- ▶ Outdated language relating to municipalities deleted
- ▶ \$10,000 is clarified as maximum AMA, even if a matter includes multiple instances of non-compliance

Compliance Committee: Proposed Changes

- ▶ Compliance Committee will now be made up of independent arbitrators/mediators
 - ▶ Members' late locates challenges make finding "members in good standing" difficult
 - ▶ Shared use of LSP's and identical compliance challenges create too many conflicts of interests
- ▶ Members and ON1Call may jointly agree to mediation at any point during compliance process
 - ▶ Would divert matters away from hearings, although a hearing could still happen if the agreement is not followed
 - ▶ Binding arbitration could also be another option that both parties may explore
- ▶ Appeals Committee is still a sub-set of the Board, including a representative of the member's category

By-Law 2, Schedule 3: Proposed Changes

- ▶ Other than updating some of the terms similar to By-Law 2, Schedule 2, no changes are proposed

By-Law 2, Schedule 4: Proposed Changes

- ▶ “Performance Standards and Specifications” is deleted in its entirety
- ▶ This section is operational in nature. It is essentially the operating standards from the old voluntary system. The terminology and concepts described within are all outdated as our technology platform has changed substantially since 2014
- ▶ Operational standards should be established by staff and the Board in consultation with members and excavators. The by-laws should be reserved for the governance of the Corporation

Fee Schedule Proposal

September 2020



3-Part Compliance Approach

- ▶ Revisions to ON1Call By-Laws
 - ▶ Establishes new compliance process focused on impartial mediation & arbitration
- ▶ Implementation of performance-based fee schedule
 - ▶ Allows day-to-day late locates to be dealt with outside of compliance; promotes market-driven solutions
- ▶ New Board Policy on compliance
 - ▶ Provides guidance and clarity to Compliance Committee, members, excavators and stakeholders

How the Fee Schedule Currently Works

There are two parts to the fee schedule:

- ▶ The assessment amount
 - ▶ Any increase must be voted upon by members. At the June 2020 AGM the members approved an assessment amount of \$9.078 million for 2021
- ▶ The fee schedule methodology (e.g., how the assessment amount is divided among the membership)
 - ▶ Currently, members receiving over 500 notifications in the previous year pay a pro-rated portion of that year's assessment amount, based on their share of total notifications received

Proposed Changes to Methodology

- ▶ Performance-Based Billing uses performance data from 360 Feedback.
- ▶ All Members of Ontario One Call are legally obligated to provide locate updates into 360 Feedback as per the by-laws.
- ▶ 360 Feedback shows performance data based on the completion of a locate in the following categories:
 - ▶ 0 - 5 Days (compliant with Act)
 - ▶ 6 - 10 Days
 - ▶ 11- 15 Days
 - ▶ 15 + Days
- ▶ Performance-Based Billing will attribute a point value for every locate completion category
 - ▶ A locate completed on time (0-5 business days) would be worth one point
 - ▶ Point values would increase based on later, non-compliant time intervals
- ▶ The total points for all members (with >500 notifications) would then be used to calculate the next year's assessment amounts for each member

Category (Days)	Points Allocation
0 - 5	1.00
6 -10	2.00
11 - 15	3.00
15 +	4.00
Abandoned tickets*	1.00

Example#1 - Based on 2018 Performance

Member	0-5%	6-10%	11-15%	15+%	% Late	Performance Based Total Points	Percentage of Overall	Performance Based Total	2019 Total	Difference	Percentage Difference
Electrical #1	97.8%	0.6%	1.6%	0.4%	2.2%	40,589	1.0%	\$ 52,694	\$ 58,066	-\$ 5,372	-9%
Electrical #2	97.7%	1.4%	0.5%	0.3%	2.3%	58,869	1.4%	\$ 76,426	\$ 84,565	-\$ 8,139	-10%
Electrical #3	65.9%	18.1%	10.5%	5.4%	34.1%	62,429	1.5%	\$ 81,047	\$ 64,364	\$ 16,683	26%
Electrical #4	85.1%	9.8%	3.1%	2.1%	14.9%	253,767	6.1%	\$ 329,449	\$ 315,927	\$ 13,521	4%
Electrical #5	97.1%	1.9%	0.6%	0.3%	2.9%	71,249	1.7%	\$ 92,498	\$ 101,564	-\$ 9,066	-9%
Electrical #6	75.2%	10.1%	7.3%	7.4%	24.8%	185,207	4.4%	\$ 240,442	\$ 214,800	\$ 25,641	12%
Gas/Oil/Pipeline #1	89.7%	5.5%	3.2%	1.6%	10.3%	649,410	15.6%	\$ 843,085	\$ 850,327	-\$ 7,242	-1%
Gas/Oil/Pipeline #2	77.6%	14.7%	4.9%	2.8%	22.4%	457,525	11.0%	\$ 593,974	\$ 527,991	\$ 65,983	12%
Municipality #1	99.2%	0.0%	0.5%	0.3%	0.8%	7,473	0.2%	\$ 9,702	\$ 10,883	-\$ 1,182	-11%
Municipality #2	99.7%	0.2%	0.0%	0.0%	0.3%	38,770	0.9%	\$ 50,332	\$ 57,183	-\$ 6,851	-12%
Municipality #3	99.8%	0.13%	0.01%	0.01%	0.2%	61,900	1.5%	\$ 80,361	\$ 91,210	-\$ 10,850	-18%
Municipality #4	62.1%	20.2%	2.2%	15.4%	37.9%	48,490	1.2%	\$ 62,951	\$ 56,119	\$ 6,833	12%
Municipality #5	85.7%	8.0%	3.4%	2.9%	14.3%	120,850	2.9%	\$ 156,891	\$ 167,037	-\$ 10,145	-6%
Municipality #6	77.3%	6.9%	5.8%	10.1%	22.7%	42,911	1.0%	\$ 55,708	\$ 50,352	\$ 5,357	11%
Municipality #7	81.5%	9.2%	2.7%	6.6%	18.5%	47,590	1.1%	\$ 61,783	\$ 63,994	-\$ 2,211	-3%
Municipality #8	96.8%	1.9%	0.8%	0.5%	3.2%	38,144	0.9%	\$ 49,520	\$ 54,536	-\$ 5,017	-9%
Municipality #9	83.7%	4.6%	3.1%	8.5%	16.3%	355,203	8.5%	\$ 461,136	\$ 510,802	-\$ 49,666	-10%
Telecommunications #1	92.3%	4.1%	1.6%	2.0%	7.7%	997,092	23.9%	\$ 1,294,457	\$ 1,320,449	-\$ 25,992	-2%
Telecommunications #2	83.9%	4.2%	1.5%	10.4%	16.1%	123,996	3.0%	\$ 160,976	\$ 150,399	\$ 10,576	7%
Telecommunications #3	98.9%	0.4%	0.4%	0.4%	1.1%	28,137	0.7%	\$ 36,528	\$ 40,894	-\$ 4,366	-11%
Telecommunications #4	86.9%	5.5%	4.9%	2.8%	13.1%	477,567	11.5%	\$ 619,993	\$ 618,491	\$ 1,502	0%

Category (Days)	Points Allocation
0 - 5	1.0
6 - 10	2.0
11 - 15	3.0
15 +	4.0
Abandoned tickets*	1.0

Total fees for the above 21 Members = \$5,409,953.02

*Abandoned tickets are notifications that members have not actioned or cancelled in the system

Example#2 - Based on 2019 Performance

Member	0-5%	6-10%	11-15%	15+%	% Late	Performance Based Total Points	Percentage of Overall	Performance Based Total	2020 Total	Difference	percentage Difference
Electrical #1	98.8%	0.3%	0.1%	0.4%	1.2%	37,899	0.7%	\$ 43,423	\$ 54,121	-\$ 10,699	-20%
Electrical #2	77.6%	15.5%	3.7%	3.2%	22.4%	11,943	0.2%	\$ 13,684	\$ 13,096	\$ 587	4%
Electrical #3	63.3%	20.2%	8.4%	8.0%	36.7%	69,407	1.3%	\$ 79,523	\$ 62,592	\$ 16,931	27%
Electrical #4	97.6%	1.1%	0.5%	0.7%	2.4%	64,407	1.2%	\$ 73,794	\$ 89,620	-\$ 15,827	-18%
Electrical #5	47.0%	5.7%	1.3%	35.1%	53.0%	67,361	1.2%	\$ 77,178	\$ 45,770	\$ 31,408	69%
Electrical #6	75.6%	11.3%	4.3%	8.0%	24.4%	374,468	6.9%	\$ 429,044	\$ 377,714	\$ 51,330	14%
Electrical #7	74.0%	8.8%	3.3%	2.2%	26.0%	85,989	1.6%	\$ 98,521	\$ 102,409	-\$ 3,888	-4%
Electrical #8	84.5%	10.9%	2.6%	2.0%	15.5%	36,722	0.7%	\$ 42,074	\$ 43,634	-\$ 1,560	-4%
Electrical #9	89.5%	3.9%	1.7%	2.2%	10.5%	164,518	3.0%	\$ 188,495	\$ 209,748	-\$ 21,252	-10%
Gas/Oil/Pipeline #1	84.4%	7.4%	2.9%	3.1%	15.6%	761,334	14.1%	\$ 872,293	\$ 902,486	-\$ 30,193	-3%
Gas/Oil/Pipeline #2	63.9%	12.4%	4.7%	17.1%	36.1%	754,908	14.0%	\$ 864,930	\$ 632,991	\$ 231,940	37%
Municipality # 1	79.2%	10.6%	0.4%	3.6%	20.8%	60,200	1.1%	\$ 68,974	\$ 71,526	-\$ 2,552	-4%
Municipality # 2	89.1%	4.9%	1.6%	3.3%	10.9%	59,986	1.1%	\$ 68,729	\$ 73,730	-\$ 5,001	-7%
Municipality # 3	71.5%	28.3%	0.0%	0.0%	28.5%	36,923	0.7%	\$ 42,304	\$ 41,703	\$ 601	1%
Municipality # 4	81.4%	7.3%	4.0%	6.9%	18.6%	53,010	1.0%	\$ 60,736	\$ 56,598	\$ 4,138	7%
Municipality # 5	36.9%	14.9%	12.4%	35.6%	63.1%	64,068	1.2%	\$ 73,405	\$ 37,734	\$ 35,671	95%
Municipality # 6	98.4%	1.4%	0.1%	0.2%	1.6%	40,761	0.8%	\$ 46,702	\$ 57,936	-\$ 11,235	-19%
Municipality # 7	96.3%	2.8%	0.4%	0.3%	3.7%	149,916	2.8%	\$ 171,765	\$ 208,281	-\$ 36,516	-18%
Municipality # 8	91.5%	3.4%	1.2%	3.4%	8.5%	164,882	3.1%	\$ 188,912	\$ 206,397	-\$ 17,485	-8%
Municipality # 9	89.6%	4.8%	2.0%	3.3%	10.4%	34686	0.6%	\$ 39,741	\$ 42,411	-\$ 2,670	-6%
Municipality #10	98.3%	0.7%	0.4%	0.5%	1.7%	342645	6.3%	\$ 392,583	\$ 482,582	-\$ 89,999	-19%
Municipality #11	53.5%	1.1%	0.2%	42.2%	46.5%	71154	1.3%	\$ 81,524	\$ 45,288	\$ 36,236	80%
Telecommunications #1	89.8%	4.2%	1.9%	2.7%	10.2%	1,049,512	19.4%	\$ 1,202,471	\$ 1,312,350	-\$ 109,879	-8%
Telecommunications #2	90.6%	4.4%	1.9%	2.9%	9.4%	237,260	4.4%	\$ 271,839	\$ 294,740	-\$ 22,901	-8%
Telecommunications #3	94.2%	1.8%	0.6%	0.6%	5.8%	26,625	0.5%	\$ 30,505	\$ 36,879	-\$ 6,374	-17%
Telecommunications #4	80.7%	4.0%	2.4%	4.6%	19.3%	539,329	10.0%	\$ 617,932	\$ 638,668	-\$ 20,736	-3%
Telecommunications #5	81.3%	12.3%	3.3%	2.5%	18.7%	39,631	0.7%	\$ 45,407	\$ 45,482	-\$ 75	0%

Category (Days)	Points Allocation
0 - 5	1.0
6 - 10	2.0
11 - 15	3.0
15 +	4.0
Abandoned tickets*	1.0

Total fees for the above 27 Members = \$6,186,488.07

*Abandoned tickets are notifications that members have not actioned or cancelled in the system

Key Features

- ▶ Zero sum game. Some members will save money, others will pay more. There are clear “carrots” and “sticks”
- ▶ Members are being compared against peers
- ▶ ON1Call’s revenues are unaffected
- ▶ The potential swing in a members’ fees from year to year is capped at +/- 30%
- ▶ Would be implemented for 2023 member’s fees based on 2022 data

Critical Analysis

- ▶ More modern form of regulation - Not based on compliance or inspection
- ▶ Allows day-to-day late locates to be dealt with outside of compliance hearings
- ▶ Makes late locates more of a *business problem* rather than a *legal problem*
- ▶ Creates a financial benefit to improving locate performance ... and a financial penalty for doing a relatively poor job
- ▶ Gives excavators and stakeholders confidence that there are consequences for poor performance
- ▶ Promotes excellent 360 Feedback compliance
- ▶ This is a change from “fee for service” model, but ON1Call’s mandate is more than just providing a service - Even as a member-driven organization we are still responsible for delivering compliance outcomes

Board Policy on Late Locates

September 2020



Board Policy on Late Locates

- ▶ The Board Policy on Late Locates gives the Compliance Committee some guidance and parameters around how to interpret certain aspects of compliance. The policy represents the only input the Board has into compliance matters other than hearing appeals.
 - ▶ It gives context to the phrase “reasonable attempts”
 - ▶ It states that a member could appear more than once in a year for late locates, but generally that a matter subject to a hearing would consist of a large volume of late locates
 - ▶ Encourages mediation & arbitration
- ▶ The policy is meant to lay down some general guidance to the committee without trying to dictate outcomes

Objective of Board Policy

- ▶ It is desirable for the Compliance Committee to understand the expectations of the Board. Such knowledge mitigates the risk that the Board of Directors' Appeal Committee would alter committee decisions on appeal
- ▶ Certain terms in the legislation, regulation and by-laws may not have specific definitions and further clarity will help the committee, members and excavators understand their roles and responsibilities

Members and the Board Policy

- ▶ The Board Policy is set by the Board of Directors and may be modified by the Board at their discretion
- ▶ It must be consistent with the language and intent of provincial law
- ▶ Members may inform and comment on the policy, but ultimately the Board must approve. This is because the Board is meant to be independent of the potential conflicts that arise when a membership is passing rules governing itself

Timelines

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