

REGULATION UPDATES A PATH TO IMPROVE LATE LOCATES

A comprehensive review of Ontario's existing law compared to the United States finds it is a significant limiting factor in establishing a complete damage prevention system in scope and accountability. This article uses CCGA Best Practices to identify and advocate for comprehensive improvements to Ontario laws. The Ontario law is compared to other dig safe laws across North America and explains how system gaps contribute to late locates.

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The Ontario Underground Infrastructure Notification System Act (OUINSA) created only part of a system, with limited mandatory membership for key stakeholders. The system works for small projects and those requiring little planning, but is not adequate for large, complex projects that require advanced design and planning. Before OUINSA came into effect, industry and the Province acknowledged the system needed further regulation to be effective, but no improvements to Ontario law have been made, and Ontario One Call and its members are limited by an incomplete system to make truly effective changes.

At their annual general meeting in June 2020, Ontario One Call

announced their intent to update their by-laws to improve operations. Although consultation is expected to begin this autumn, parts of the by-law cannot come into force without Ontario Regulation 92/14 being repealed and replaced. This necessary step by Ontario's legislature provides the first significant opportunity since 2014 to co-develop provincial regulation and Ontario One Call by-laws. The next year should be used wisely to significantly improve our damage prevention system and ensure accountabilities are more comprehensive and properly assigned.

In ORCGA and Ontario One Call workshops last autumn, it was generally agreed that larger projects cause and incur the majority of late locates.

As such, this article focuses on utility projects within the right-of-way.

EXISTING LAW

Four months of research examined how Ontario's current law compares to jurisdictions across North America, with a focus on utility construction project responsibilities. Word and definition counts of damage prevention laws provide a starting point for evaluating how complete the rules are in Ontario.

Figure 1 shows Ontario has the third shortest legislation for damage prevention, and the lowest number of definitions. There is a distinct trend towards increased content and detail/definitions from left to right across the chart, with Ontario law being among the least comprehensive of those examined.

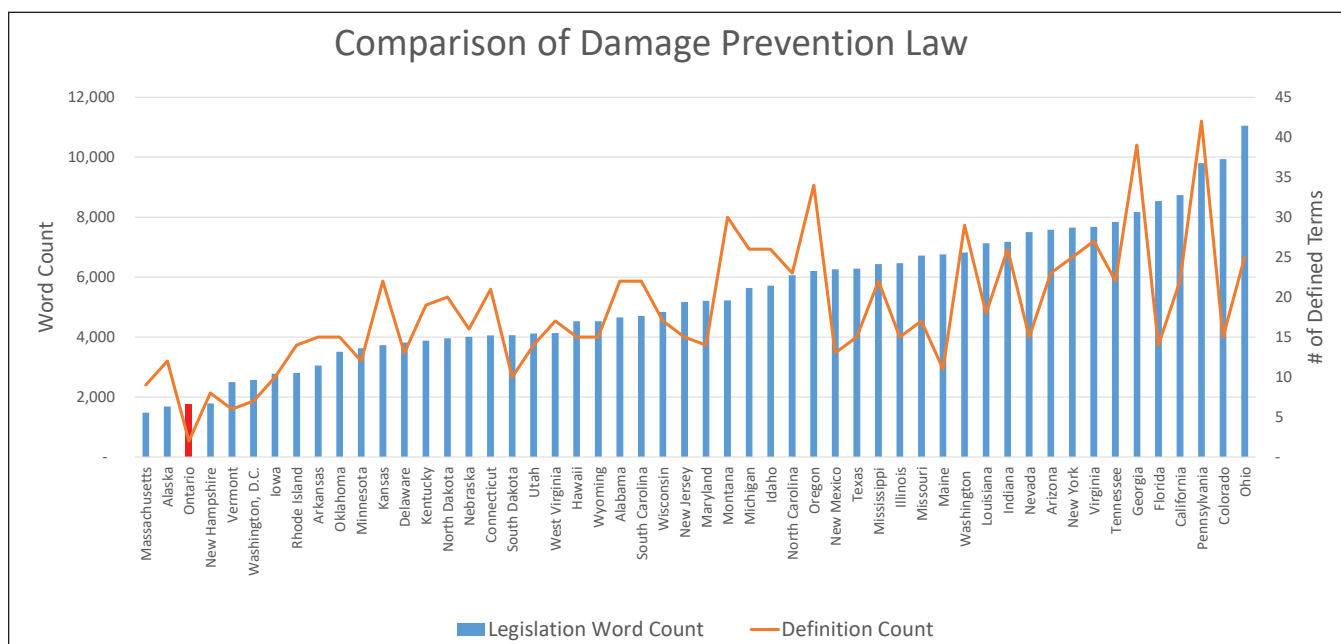


Figure 1

To understand the significance of the omissions in Ontario's law, we considered the responsibility to plan work around existing utilities and how missing requirements contributes to late locates. Under a complete damage prevention system, the rules must consider how different utilities uniquely manage, plan and design their construction projects, and also how they complete maintenance and repairs. Ontario's existing legislation focuses on the back end of the excavation or construction process by naming and assigning responsibilities only to excavators, One Call, utility owners and/or locators. Figure 2 shows this incomplete approach encourages responsibility to be delegated downstream to the construction processes while simultaneously limiting upstream accountability.

In comparison to the United States, Ontario's law:

- does not include utility designers and their responsibilities,
- only makes construction-stage locates mandatory, and
- does not require utilities to provide designers with their infrastructure records or field markings.

In the United States, 53% of the population was found to be governed by law that identifies designer responsibilities (note: population is used to weigh the representative impact of damage

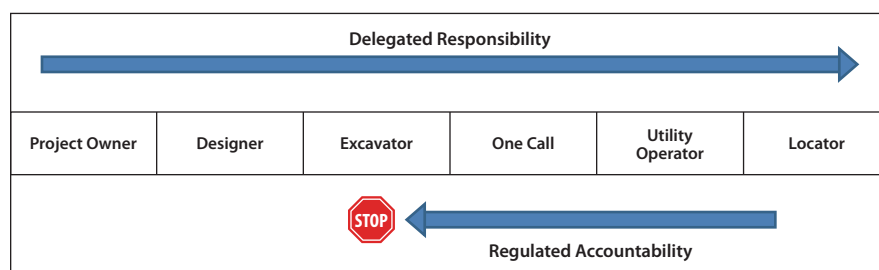


Figure 2

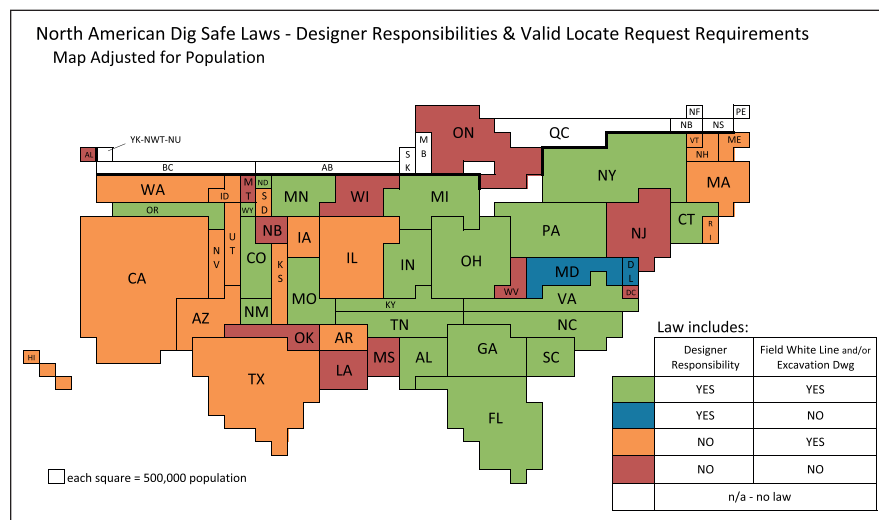


Figure 3

prevention statutes). Figure 3 shows Ontario is the most populous jurisdiction east of the Red River/Mississippi River without both design-stage responsibilities in law and excavation limits required to be part of a valid

locate request. Ending the delegation of locates responsibility downstream to excavators and utility operators/locators would be the first significant step in our path to permanently improve locate performance.

The most progressive states were more likely to outline design requirements similar to those in the CGA Best Practices. In fact, 9 of the 10 states on the right side of Figure 3 (with the most wordy damage prevention laws), include designer or design services definitions and/or responsibilities. While this example begins to show there is a qualitative impact to the quantity of words contained in laws, we still need to assess if they enable effectiveness and efficiency.

Our research found 85% of Americans live in areas where field white-lining, or their qualified equivalent (design drawings), must be provided with each locate request. This is possible because once designers and their responsibilities are recognized in law, their final design product is better and less likely to change. With improved plans and confidence, excavators can provide precise excavation limits/white-lining with their locate requests, instead of widening requests to project limits.

More accurate designs not only proactively identify and avoid costly conflicts, they also allow locators to identify issues and correct records in the design-stage and mark out utilities during construction in a fraction of the time.

When every role in the project delivery process seeks to minimize their own cost and delegate work and responsibility downstream, Ontario's system is found to discourage CGA Best Practices, and can often be a primary cause of late locates. Fortunately, over the next year we will have an opportunity to assist the province and Ontario One Call to co-develop their regulation and by-laws.




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