



Serious consideration should be given to delegating all investigation and enforcement of the One Call Act to an independent and unbiased agency, or, replacing Ontario One Call's compliance department with an independent body.

ONTARIO REQUIRES A NEW APPROACH TO DAMAGE PREVENTION LEGISLATION COMPLIANCE AND ENFORCEMENT

By Doug Lapp, President & CEO, ORCGA

The American Federal Highway Administration reported that underground utilities are a major cause of highway construction schedule and budget overruns.

In addition to construction delays, damage to underground utilities during construction makes every construction project site high risk. In order to promote improved safety, the US based Pipeline and Hazardous Materials Safety Administration (PHMSA) developed a tool to assess state one-call systems.

In the 2009 PHMSA assessment, Washington State's Damage Prevention program was found to be inadequate both in terms of enforcement and its role to help resolve issues fairly and consistently. The Dig Law Group, a consortium of utilities, cities, counties, contractors, and excavators, was formed to draft significant updates to Washington's Underground Utility Damage Prevention Law.

Efforts from the Dig Law Group resulted in a revised law that includes clearer enforcement definitions and procedures, requires reporting of damages to underground utilities, establishes a Safety Committee of stakeholder representatives to review complaints of alleged underground utility violations, and establishes the Damage Prevention Account where fines are deposited to be used for educational purposes to improve excavation safety.

In 2014, PHMSA also found that the Colorado one-call system had serious deficiencies, the most serious being that the one-call legislation did not assign an agency to enforce the legislation.

In 2018, the Colorado legislature revised its one-call legislation to create an enforcement agency – The Underground Damage Prevention Safety Commission – that operates independently of Colorado 811. The commission is composed of six representative representing owner/operators, four representing engineers, contractors, and excavators, four representing government agencies and one representing farmers and ranchers.

The Underground Damage Prevention Safety Commission is responsible for reviewing alleged violations of the Colorado One Call act with the power to order appropriate remedial action or monetary penalties. Alleged violations are reviewed by a committee which must include the same number of members representing excavators and owners/operators. A recommendation of remedial action that includes a fine requires a unanimous vote of the review committee.

In Ontario, Compliance and Enforcement remains a part of Ontario One Call, a model PHMSA has twice previously found inadequate and seriously deficient. Compare the Ontario One Call model with other provincial enforcement agencies such as the Ministry of Labour, the TSSA and the ESA, who have investigators and enforcement personnel that are independent of their respective regulated communities.

Serious consideration should be given to delegating all investigation and enforcement of the One Call Act to an independent and unbiased agency, or, replacing Ontario One Call's compliance department with an independent body.

Improvements to the current investigation and enforcement elements will result in greater infrastructure safety, business, and financial outcomes. OOC is currently proposing by-law amendments, one of which is to move enforcement and compliance to an external group for mediation/arbitration.

The Ontario Regional Common Ground Alliance works to effectively eliminate damages to underground infrastructure through influential advocacy, meaningful education and impactful engagement, in part, through channels such as *Ear to the Ground*. For this reason, the ORCGA has dedicated this issue of *Ear to the Ground* to further exploring Late Locate issues.

