

A. Introduction

The Residential and Civil Construction Alliance of Ontario (RCCAO) commends the Ontario government for its steps to encourage infrastructure construction and expediting broadband access and services across the province. RCCAO has been advocating for more than a decade for improvements to Ontario's dig safe construction practices and welcomes the opportunity to comment on Bill 257 in front of this esteemed committee.

B. About RCCAO

RCCAO is a not-for-profit industry association that represents both labour and management in the residential and civil sectors of Ontario's construction industry.

For many years, construction contractors attempting to provide needed municipal infrastructure have waited for several weeks beyond the legislated deadline for timely and reliable utility locates. Non-compliance with safety related statutes such as the *Ontario Underground Infrastructure Notification System Act, 2012*, not only creates unnecessary danger and risks to workers and the public, but also causes delays which in turn increases the cost and delivery time for municipal infrastructure.

C. RCCAO's Comments on Bill 257

1. Subsection 21(1)

This section restricts the measures to expedite utility responses to locate requests for designated broadband projects. If the measures are intended to allow for safe and faster construction, we believe that the Province should provide similar measures for other telecom projects and other infrastructure projects such as public transit, health facilities, housing or emergency services.

2. Subsection 21(2)

While RCCAO supports more serious consequence to utilities who do not respond to utility locate requests within 10 business days, RCCAO has serious concerns about the Minister authorizing any contractor or any other person to excavate without a completed utility locate. Excavating without a completed locate risks damaging a gas line which could have deadly consequence for the excavator and members of the public, an electric conduit which could cause fire or serious injury to the excavator or damage other vital infrastructure that could have adverse impacts on residents, businesses or other members of the public. Instead of authorizing a person to dig without a locate, a more practical and meaningful consequence to a One Call member that does not respond to a locate request with timely and reliable information is to impose a significant administrative monetary penalty on the delinquent utility.

3. Subsection 21(3)

If the intention of this subsection is to shield a proponent of a designated broadband project from liability, there are serious gaps. Death, serious injury and/or tangible property damage are possible consequences if an excavator damages a gas line, electrical conduit or other underground utility while attempting to construct or install broadband infrastructure without a locate. There would likely be significant public pressure to hold the Ontario government and the broadband project proponent financially and criminally responsible for excavating without a locate which in turn triggers serious injuries, death or tangible property damage to persons other than the affected utility, namely nearby residents, businesses and members of the public.

4. Subsection 21(4)

Similar to RCCAO's comments regarding subsection 21(3) above, if the intention of this subsection is to shield a proponent of a designated broadband project from liability, there are serious gaps. The class of persons who may have a cause of action in the event of damage to a gas line, electrical conduit or other underground utility is broader than the officers, directors, employees and agents of the relevant One Call Member. Notwithstanding the proposed language of subsection 21(4), there would likely be significant public pressure to hold the Ontario government and the broadband project proponent responsible for serious injuries, death or tangible property damage to nearby residents, businesses and members of the public.

5. Subsection 21(5)

Similar to RCCAO's comments regarding subsection 21(3) and 21(4) above, while subsection 21(5) prohibits a wide variety of potential proceedings by the One Call member, the prohibition does not protect the designated project proponent from any actions by nearby residents, businesses and members of the public.

6. Subsection 21(6)

RCCAO is in support of the broad principle that an excavator should be able to recover certain losses or expenses which were unavoidably incurred as a result of a One Call member's failure to provide accurate and reliable utility locate information. RCCAO believes that this right should be affirmed in favour of all excavators who incur losses or damages as a direct result of the One Call member's failure to provide a timely and reliably accurate locate response.

7. Subsection 21(7)

RCCAO respectfully submits that this subsection is not necessary. Any One Call member and any excavator are always authorized to agree to a compensation package if the One Call member fails to provide a timely and reliably accurate locate response.

8. Subsection 21(8)

RCCAO submits that subsection 21(8) should specify a period of time, e.g. twenty business days, during which the parties can attempt a mutual settlement. The excavator should be required to wait until the specified period has lapsed before bringing

a claim before the Local Planning Appeal Tribunal. It is not clear that the Local Planning Appeal Tribunal has any guideline or expertise as to how to adjudicate such a claim, and if there is no guideline, then the Ontario government should, in consultation with industry stakeholders, create and publish a suitable guidance document. Similar to RCCAO's comments regarding subsection 21(6), RCCAO believes that such a right should be available to all excavators who must request a utility locate.

D. Closing Remarks

RCCAO appreciates the opportunity to provide comments on Bill 257 and has chosen to focus on the scope and impact of section 21. RCCAO has been advocating for excavator remedies against One Call members for any failure to provide timely and reliable accurate locate information.

RCCAO does not support any excavator proceeding to break ground without detailed knowledge of the nature and location of any underground facilities within the proposed excavation zone. RCCAO strongly recommends that the Province works with all stakeholders to establish other remedies to expedite locate responses, such as administrative monetary penalties.

As RCCAO membership represents thousands of excavators across the Province of Ontario, RCCAO remains ready to work with the Ontario Government, Ontario One Call and other stakeholders to implement practical and effective policies regarding safe utility locate practices.

We appreciate your time in reviewing our submission.

Regards,



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