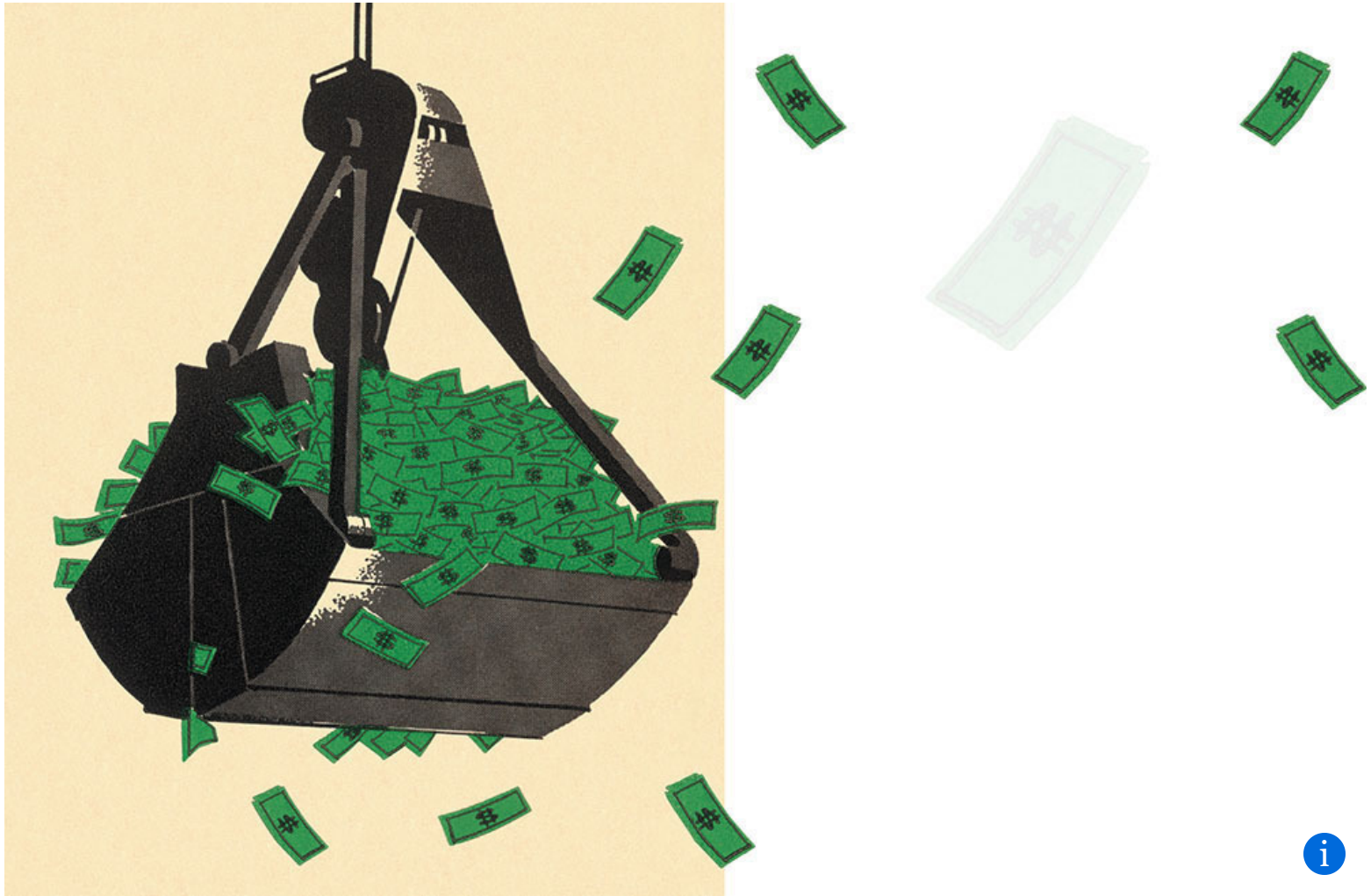


To Charge or Not to Charge

THE IMPLICATIONS OF CHARGING — OR NOT — FOR LOCATES

BY JAMES CARELESS



It's safe to say that money is the cause of the locate delays that dog Ontario One Call and the contractors who rely on it. Utilities, such as Enbridge Inc., don't want to shoulder the cost of providing on-site locates for other companies' large infrastructure projects. They also don't want to pay fines for late locates under the updated Ontario Underground Infrastructure Notification System Act, the provincial legislation governing Ontario One Call. As a way of defraying these costs, Enbridge briefly floated the idea of charging \$200 per locate for its gas line locates in March 2023.

If such charges for locates were allowed by the Ontario government, the impact on project owners would be significant. "We did the quick and dirty math on how this would impact the Ontario Line, the new subway being built in Toronto," said Nadia Todorova, executive director of the Residential and Civil Construction Alliance of Ontario (RCCAO), which represents both labour and management organizations in Ontario critical infrastructure construction.

"Assume there are 12 city blocks per kilometre," she explained. "The Ontario Line will be 15.6 km or 18,720 blocks. If you assume that there are 11 locates per city block, then a total of 205,920 locates will be called on the Ontario line. If all 11 utilities charge \$200 to do a locate, this will add \$41,184,000 in extra project costs on locates alone."

Not surprisingly, the RCCAO and its members were "quite taken aback" by Enbridge's proposal to charge \$200 per locate. "We were very concerned because we knew right away that this would have a profound impact on the cost of construction in Ontario," said Todorova. "We were also quite surprised by the fact that the fee was going to take effect as of May 1. This gave us about six weeks to figure out what this meant for the bottom line of projects. So, we were really taken aback by everything that had to do with this proposal."

As mentioned in an accompanying article in this issue of *H₂OSWCA* magazine, Enbridge soon backed down on this proposed charge, followed by the Ontario government launching a consultation to tackle the late-locate issue. But Enbridge's actions make sense given the factors affecting the current locate system in Ontario. Simply put, the existing system is being asked to do more than it appears equipped to handle and the only apparent solution to the problem appears to be money. The question is, whose money?



THE CULPRIT: INCREASED DEMAND FOR EXCAVATIONS

The reason the locate system in Ontario is failing to provide contractors with on-site locates within five business days — three to eight weeks is a more realistic expectation these days — has everything to do with supply and demand. Specifically, there's a tremendous demand for locates driven by provincial government initiatives on top of private sector activities, said Douglas Lapp, president and CEO of the Ontario Regional Common Ground Alliance. This is increasing demand for locates from an already strained locate system.

"One of these initiatives is the Building Transit Faster Act, and the other is the Building Broadband Faster Act," Lapp said. "The transit act has been out there for a while with Metrolinx doing a lot of expansion of transit systems around the GTA and the rest of Ontario. The Building Broadband Faster Act, which came into play in 2021, was an initiative from the government to get broadband access to about 800,000 residents across the province, including First Nations where they didn't have access to it."

The result of these two provincial acts is "a lot of activity in urban and rural areas for excavators where there wasn't as much before," explained Lapp. Installing underground broadband cables across the province, on top of other conventional construction projects, "stresses the locate system in Ontario for providing locates as the volume of requests keeps increasing."



THE DEDICATED LOCATOR SOLUTION: A SIGN OF THINGS TO COME?

The Ontario government took a step toward remedying the late locate issue when it passed the Getting Ontario Connected Act (Bill 93) in 2022. This act modified the Ontario Underground Infrastructure Notification System Act/Ontario One Call system "to enable getting locates delivered on time so that you could actually get all the work done safely," Lapp said.

One of the provisions included in Bill 93 was the creation of the "dedicated locator" function for expediting locates in a speedy manner. A dedicated locator is someone paid by the project owner who focuses on locating underground utilities on their site. The benefit is that the work gets done quickly and more efficiently by eliminating delays that keep paid workers and equipment cooling their heels. The downside is the fact that the dedicated locator must be paid by the project owner, as opposed to the free locate service that is supposed to be delivered on a timely basis in Ontario, but increasingly isn't.

The conundrum being raised by the dedicated locator solution is akin to the one facing public health care in Canada. There isn't enough money in the public system to fund the level of service that its users expect, and rather than increase that funding to improve this service, some provincial governments would prefer to have users pay private providers directly instead.

The pros and cons of this approach are not up for debate in this story. What matters to *H₂OSWCA* readers, in terms of locating services, is which solution will allow them to get their excavations done without excessive delay?

"The intent of the dedicated locator solution is to assist in better managing the increased demand for locates on projects," said Lapp. "The other thing Bill 93 did was to give Ontario One Call some regulatory authority over administrative penalties for infrastructure owners not delivering the locates on time. It also deals with what is known as 'locate dumping' — contractors calling in all the locate jobs they can in hopes of getting some of them done. Under Bill 93, you can only request locate jobs on projects where you can actually begin work within 30 days."

"All these changes are intended to make the current locate system work more efficiently," he added. But will they be enough? Or is some form of industry-wide pay-for-use model similar to the dedicated locator the only realistic long-term solution to the problem? That's an issue that will likely be considered during the current set of government/industry consultations.

UPSETTING THE CONSTRUCTION INDUSTRY

One thing is certain among all this uncertainty: Enbridge's proposed \$200 locate fee has rattled the Ontario construction industry.

"Under the Ontario Underground Infrastructure Notification System Act, it states that Ontario One Call shall not charge a fee to any person submitting a locate request," said Todorova. "And the act does not explicitly provide utility owners with the authority to charge a fee for a locate request. So this is one of the things that we really want clarification from the Ontario government on."

This is why the RCCAO and other construction industry bodies like the OSWCA applaud the province's decision to consult on the overall locate delivery issue. "We definitely reached out to the government right away to try to address the situation," Todorova said. "Our position is that any change being made to this long-standing service location practice has to be done in a very comprehensive and consultative manner with utility owners, industry, and government to ensure that any outcomes are understood and any unintended consequences are mitigated."

One should not underestimate the RCCAO's displeasure with Enbridge throwing a \$200 locate fee into the mix, at a time when the construction industry is already dealing with rising costs, supply chain issues, and employee shortages. "We really had issues with the kind of unilateral implementation of a location fee just weeks before the 2023 construction digging season began," said Todorova. "We saw it as irresponsible, as it would have had immediate financial implications for critical infrastructure work being done on roads, bridges, highways, transit and housing projects across Ontario."

As mentioned in the sister article to this one, "Enbridge Gas [subsequently] made the decision to put the implementation of the proposed locate delivery charge on pause and we have been using this time to continue our industry consultations," said Andrea Stass, Enbridge's manager of external communications and media relations, in answering an email enquiry from *H₂OSWCA* magazine requesting an interview. "We anticipate announcing our next steps in the coming weeks."

As for Nadia Todorova's take on Enbridge's \$200 fee? "I don't want to speak on their behalf, but the rationale that the RCCAO received from Enbridge is that this was all due to the administrative monetary penalties that are coming down the pipeline through Bill 93, which were due to be implemented on April 1, 2023 but have since been delayed for a year as part of the provincial consultation process. I think they saw it as a preemptive measure to address any of those fines that they would be getting for late locate jobs."

For his part, Douglas Lapp believes Enbridge backed down on the \$200 locate fee due to the construction industry concerns that greeted its announcement. "When they put it out, there was a lot of confusion and questions raised by a lot of people who didn't know it was coming — and the wording wasn't clear on when and where it would be applied," he said. "Because of the reaction that they heard from industry and its construction associations, I think that's when they said, 'We

need to put this item on pause,' and then determined, 'we need to do more consultation with the industry before we implement something like this.'"

The provincial government's decision to step in at this point was timely, Lapp noted. "I think the government stepped in and said, 'we need to get involved with these concerns because the charging of locate fees are not going to be limited to Enbridge: It's going to be Bell Canada, Rogers, and every other utility,'" he said. Not only would this add expenses to new construction projects, but it would raise havoc with existing multi-year contracts that did not have locate fees built into their budgets.

"That's one of the biggest concerns," said Lapp. "Who's going to pay for this?"

TIME FOR A SENSIBLE SOLUTION

As anyone who has ever tried to split a restaurant bill between 12 people knows, getting people to acknowledge they have a responsibility to pay their fair share isn't easy. Sometimes, it is impossible to get some people to pay at all.

This being said, the players in the dilemma of late locates on projects are business people who understand that bills have to be paid, even if it is no fun to pay them. This said, a sensible solution to this table-of-12 funding conundrum is possible, as long as project owners, their contractors and utility companies work toward a resolution that respects economic realities.

Here's the point: The reason Ontario is running into late locate issues is that utilities are expected to shoulder the costs of increasing locate demands due to large infrastructure projects. Since these companies are profit-making ventures, it is unreasonable to expect their managers to meekly accept this financial hit to their bottom lines.

Now, actions like Enbridge pulling \$200 locate fees out of thin air are no solution to the problem. But they do focus attention on the issue and motivate the government to do something in response, so perhaps such actions do have their place.

Whatever the case, money must be found to fund the growing demand for locates in Ontario. It may be in the form of project owner cash for dedicated locators. It may be based on some sort of industry-wide fees based on actual usage of Ontario One Call on a per-company, per-locate basis. It could even be in the form of provincial funding, or a mix of these three options and others combined. But one thing is certain: Something must be done, because the current state of late locates in Ontario is bad for everyone.