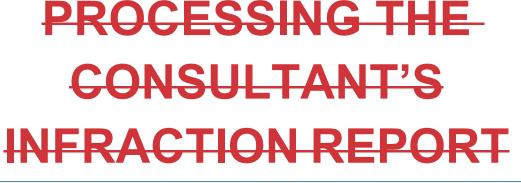


# **MINISTRY OF TRANSPORTATION** PROCEDURES FOR PROCESSING THE **CONSULTANT'S**



**MINISTRY OF TRANSPORTATION** 

**PROCEDURES FOR** 

PROCESSING THE

ENGINEERING



# **SERVICE PROVIDER INFRACTION REPORT**

Qualification Committee September 2015 May 2023

# **MINISTRY OF TRANSPORTATION ONTARIO**

# PROCEDURES FOR PROCESSING THE CONSULTANT'S ENGINEERING SERVICE PROVIDER INFRACTION REPORT

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### 1. PURPOSE and INTENT

The purpose of these procedures is to provide an administrative routineprocess for handling the Infraction Report. The These procedures apply to engineering, and define the roles of the Engineering Service Providers (includes including Engineering Consultants, Construction Contract Administration Consultants, and Laboratories) and the Ministry of Transportation ("MTO", "ministry"). The intent is to ensure that Infraction Reports are issued in circumstances that are appropriate, and are processed in a timely manner while respecting the rights and obligations of all parties. These procedures supersede those contained in other ministry guides.

The intent of the infraction process is to provide the Engineering Service Provider (Service Provider) with a series of progressive/staged warnings, and the opportunity to correct a deficiency, before an Infraction Report is issued unless the situation is sufficiently serious to warrant the immediate issuance a Warning orof an Infraction Report without prior verbal or written notification or warning.

In keeping with the progressive warning principleapproach, if a performance or <u>behaviour issue occurs</u>, the matter persists after one or more ministry agreement administrator should give a verbal warnings have been given, the matter or written notification.

<u>The formal written notice</u>, will be communicated to the Service Provider's Key Contact listed in RAQS and <u>to the Service Provider's</u> Project Manager <del>by way of a formal written notice, and include</del>including the following information:

- (a) Description of the subject activity, and nature of the concern.
- (b) Date and location of the incident, as applicable or issue.
- (c) <u>Assignment Agreement</u>\* terms and conditions/clause(s), as applicable) with which the Service Provider is not complying.
- (d) Specified time frame in which corrective action is <u>or was</u> to be taken<del>, as applicable</del>.
- (e) State that the matter could lead to further administrative action such as the issuance of a Warning of Infraction Report or an Infraction Report, if applicable with or without further verbal or written communication.
- (f) Other information as applicable that is relevant to the matter such as photographs.

Nevertheless, situationsSituations may arise that are sufficiently serious to warrant the immediate issuance of a Warning of Infraction Report or an Infraction Report without any prior warningverbal or written warnings or notifications, such as wilfula willful violation of the AssignmentAgreement, severe and imminent risk to the workers and/or public safety or the natural environment resulting from the Service Provider's failure to exercise due diligence and properly control activities related to the services; contractual breaches where the ministry could be held liable for third party damages due to safety or environmental impacts; offering inducements to the MTO Project-Manager/Agreement AdministratorContractor staff or ministry representatives; serious defects in the quality of the services; failure to meet the requirements of the contractContract; breaches to the rules governing-tendering; or other Page 3 of 7.

Procedures for Processing the Consultant's Infraction Report – September 2015 Page 3 of 24 appropriateserious situations.

<sup>\*</sup> Where, <u>AssignmentAgreement</u> refers to the executed agreement resulting from this Request for Proposal/Request for Quotation signed by the ministry and the Service Provider.

#### Joint Ventures

A Service Provider Joint Venture is treated as an Equal Partnership of two (2) or more firms. If there is a consortium or a legal partnership involved, each partner will be impacted by the infractionInfraction Report, if the Committee decides to impose sanctions.

Application of the infraction process and decisions are to be guided by the following principles:

- i. Applied in circumstances that are appropriate and in a manner that respects the rights and obligations of all parties.
- ii. Support<u>a</u> fair, equitable and transparent environment for tendering and delivery of the services.
- iii. Support a strong working relationship between all parties, based on mutual respect, the principles of fairness, equity, transparency and accountability.
- iv. The infraction sanction ("sanction") process is not to be used as a means to negotiate matters in dispute under the <u>contractContract</u>.
- v. Promote the consistent application of the infraction process by <u>ministrythe</u> ministry staff at the project level and across the <u>ministry</u>.

# 2. WARNING OF INFRACTION AND INFRACTION REPORT

#### 2.1. Warning of Infraction Reports

If changesappropriate corrective actions are not forthcomingtaken after issuance of the above noted-verbal and written warning, then the Engineering Service Provider is issued a formalwritten Warning of Infraction Report. A copy of the <u>(Form PH-EC-901)</u>. The form is shown in Appendix I. The available on the MTO Technical Publications website (TechPubs). The Engineering Service Provider Warning of Infraction Report and all accompanying documents are electronically transmitted to the Engineering Service Provider through Registry, Appraisal & Qualification System ("RAQS")", or via email with a copy to the Engineering Service Provider's corporate officekey contact in RAQS, a copy to the Engineering Service Provider's Project Manager, and a copy sent to the Secretary, Qualification Committee ("Secretary").") via email at qualificationcommittee@ontario.ca. This serves to put the Engineering Service Provider on notice that, should the problems continue, an Infraction Report will be issued.

The <u>Engineering</u> Service Provider may, and is encouraged to, request a formal meeting to discuss the Warning of Infraction Report. If the meeting is requested by the <u>Engineering</u> Service Provider, then in addition to the MTO Project Manager/Agreement Administrator, the <u>ministryministry</u> will arrange for the <u>Regional/Office Manager</u>Manager and the MTO Project Manager/Agreement Administrator to attend the meeting. The meeting will be scheduled promptly (no more than ten (10) business days <u>Business Days</u> from the day meeting is requested), so as to ensure a timely discussion of the matter of concern. If the situation giving rise to the Warning of Infraction Report is not corrected or adequately addressed, an <u>Pare 5 of 7</u>.

Infraction Report may be issued regardless of whether a formal meeting has been held or not.

A Warning of Infraction Report that is not followed by an Infraction Report is not considered by Qualification Committee ("Committee"). A Warning of Infraction Report cannot be withdrawn once it is issued.

#### 2.2. Infraction Reports

Infraction Reports are issued only to the prime Engineering Service Provider firm, or all firms involved in the joint venture.

The circumstances that can lead to the issuing of an Infraction Report vary widely with respect to both the nature of the incident and its seriousnessseverity. However, an Infraction Report will normally only be issued for a serious incident (or multiple occurrences of similar incidents) and are used to record breaches of the AssignmentAgreement including:

<ol> <li>Failure to comply with the terms and conditions of the Assignment;</li> </ol>	
ii. Failure to provide adequate organization, co-operation, personnel or-	
equipment to deliver the services;	
iii. Failure to comply with the MOL / Occupational Health and Safety	
requirements;	
iv. Delayed delivery / failure to complete the Assignment or key components in	<del>1</del>
a timely manner.	
(A) Poor quality of services attributable to Engineering Service Provider (or sub-Engin	eering
Service Provider).	
	ailure to
abide by the tendering requirements;	
(C) Failure to provide adequate organization, cooperation, personnel or equipment to	
perform the services.	
<del>vi.</del> (D)	Tender
declarations that are incomplete, inaccurate, or are not adhered to;	
(E) Failure to discharge liabilities.	
<del>vii.</del> <u>(F)</u>	Offering
inducements to the MTO Project Manager/Agreement Administrator;	
Wilful(G)	Failure to
comply with terms and conditions of the Agreement.	
<u>viii. (H)</u>	<u> Willful</u>
disregard of written instruction to correct/adjust the services or practices, which are spec	<del>ified</del>
under the Assignment, and which, if not corrected, may cause a reportable event to the Minis	<del>try of</del>
Labour, Ministry of Environment, Ministry of Natural Resources and Forestry, Fisheries and Oc	eans-
Canada, Conservation Authorities or other governing/regulating authority;	
<del>ix.</del> <u>(I)</u>	Serious
defects in quality of the services and deliverables;	
<del>x.</del> <u>(J)</u>	Severe
contractualcontract breaches, including default;	
(K) Failure to adhere to the specifications, special provisions, or any Contract specific	
clause.	
(L) Failure to complete the Agreement deliverables in a timely manner.	
(M) Failure to follow direction instructions given by the MTO Project Manager/Agreemen	t <del>7 of 7</del>
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ator<del>;</del>.

<del>xi.</del>

(N) Fraud, Collusion, Conflict of Interest, Deceit or Falsifying Documents

xii. (O) Other circumstances which may lead to a deteriorated working relationship.

An Infraction Report should not be issued in lieu of matters more appropriately recorded in the Consultant Performance Appraisal.

# 3. PROCEDURES FOR COMPLETING, ISSUING, AND RESPONDING TO AN INFRACTION REPORT

3.1. Completing the Infraction Report

The decision whether to issue an Infraction Report is made within the ministry's issuing office and will normally involve the MTO Project Manager/Agreement Administrator and Regional/Office Manager.

If an Infraction Report is required, it should be issued in a timely fashion, and preferably within fifteen (15) business days Business Days of the incident. The Consultant's Engineering Service Provider Infraction Report (Form PH-EC-900) is to be completed in accordance with the instructions contained on the Owner standard form. A copy of the form is shown in Appendix II. PH-EC-900 available on TechPubs. All supporting information must be attached. It is particularly important to state how the Assignment Agreement was violated, and the actions taken by the ministry ministry and the Engineering Service Provider. Where possible, the impact costs of the violation to the ministryministry should be given. Note that for safety and environmental violations, the impact statement may be descriptive. All information must be factual. The form is signed by the person completing the infractionInfraction Report (the MTO Agreement Administrator) and countersigned by the Regional/Office Manager.

An Infraction Report is not to be used as an instrument of negotiation and cannot be withdrawn once it has been signed by the Regional/Office Manager.

#### 3.2. Issuing the Infraction Report

<u>The Infraction Report will be issued through Contract Management System (CMS).</u> The Infraction Report, and a copy of all supporting information, must also be given to the <u>Engineering</u> Service Provider's Key Contact listed in RAQS and Project Manager, in a mandatory formal meeting.

The ministry's <u>At the meeting, the ministry's</u> representative <u>shouldmust</u> explain the reasons for issuing the Infraction Report and advise the <u>Engineering</u> Service Provider that any response must be received by the Secretary within <u>fifteen (15) business days</u> <u>Business Days</u> of the receipt of the Infraction Report, with a copy to the applicable ministry's issuing office. A copy of the Infraction Report, supporting documentation, and minutes of the meeting with the <u>Engineering</u> Service Provider are to be sent to the Secretary. (qualificationcommittee@ontario.ca).

The only exception to holding a mandatory formal meeting is when the <u>Engineering</u> Service Provider's designated contact is not available. In this case, the completed form will be issued in <u>Contract Management System (CMS) or RAQS or via email</u> with a copy to the <u>Engineering</u> Service Provider's <u>corporate office.Project Manager</u>. The <u>Engineering</u> Service Provider can request a formal meeting with the <u>ministry's regional</u>ministry's representative following the issuance of the infraction.

In the event that a formal mandatory meeting was not held after the Infraction Report has been received by the <u>Engineering</u> Service Provider, the <u>ministry</u>ministry must initiate a telephone call to:

- i) verify that the infraction report has been Infraction Report was received,
- ii) define the start of the fifteen (15) business day Business Day period for the Engineering Service Provider's response,
- iii) answer any questions from the <u>Engineering</u> Service Provider with respect to the Infraction Report. Minutes of the call must be written, and a copy <u>must be provided</u> to the <u>Engineering</u> Service Provider and the Secretary.

Once the Infraction Report has been issued, the Secretary will have an independent investigation of the Infraction Report conducted and produce the Statement of Facts by a Procedures for Processing the Consultant's Infraction Report – September 2015 Page 9 of 24

person with no direct prior involvement with the matter. The Committee decides the outcome of the Infraction Report.

#### 3.3. Engineering Service Provider's Response to the Infraction Report

The <u>Engineering</u> Service Provider has the option, and is encouraged, to respond to the Infraction Report by sending a written response to the Secretary (<u>qualificationcommittee@ontario.ca</u>) and a copy to the issuing office Manager, within fifteen (15) <u>business days Business Days</u> of the site meeting (or, if there was no site meeting, within fifteen (15) <u>business days Business Days</u> of the telephone call <u>which</u> followedfollowing the courier or registered mail delivery). The addresses of ministry offices are given in Appendix III. The ministry ministry requires that responses be factual and supported by documentation. Failure to respond will be taken as agreement with content of the Infraction Report.

#### 4. STATEMENT OF FACTS

The Secretary is responsible for <u>the</u> investigation of the incident(s) that led to the issuing of the Infraction Report, and the preparation of a Statement of Facts.

The Statement of Facts summarizes the facts of the infraction as understood by the Secretary. Both the <u>Regionrespective Office Manager</u> and the <u>Engineering</u> Service Provider can provide comments in writing with respect to the Statement of Facts. The Statement of Facts, the comments from the <u>ConsultantEngineering Service Provider</u> and the comments from the <u>Regionministry's</u> issuing office are to be presented to the Committee.

A copy of the Statement of Facts and all accompanying documents is provided to the <u>Engineering</u> Service Provider and the <u>ministry's</u>ministry's lead office with an invitation to review and comment on it. Any comments must be received, in writing, by the Secretary within the period specified in the covering letter (not normally less than fifteen (15) business days).

The Statement of Facts, Infraction Report, <u>Engineering</u> Service Provider Response, <u>ministry's</u>ministry's issuing office Response and all accompanying/supporting documents provided to the Committee will also be provided to the <u>Engineering</u> Service Provider and Office Manager, including changes or additions made prior to being presented to the Committee.

The <u>Engineering</u> Service Provider can request a formal extension, to the Secretary, prior to the due date of the response with justification as to why more time is required for the response. The <u>ministryministry</u> will review the request, and based on the information provided by the <u>ConsultantEngineering Service Provider</u> to support the request, will either grant an extension, detailing the duration of the extension, or deny the extension. The <u>ministryministry</u> will not unreasonably deny <u>a Consultant's an Engineering Service Provider's</u> request for an extension to the time giving consideration to the information provided by the <u>ConsultantEngineering Service Provider</u> and the nature and complexity of the matter.

#### 5. ROLE OF QUALIFICATION COMMITTEE

All Infraction Reports are considered by the Committee, and which will normally be placed on the agenda for the next scheduled meeting following the deadline for the receipt of responses to the Statement of Facts.

The Service Provider will have an opportunity to request one meeting, to make an oral presentation to the Committee regarding the infraction. Such meeting shall occur prior to any decision made by the Committee. The Secretary will inform the Service Provider of the date, time, and location of the meeting. The meeting will usually be held in the MTO St. Catharines Office. The Service Provider's delegation at the meeting shall be limited to two (2) persons.

That meeting will provide an opportunity for the Service Provider to be present and to listen to the information about the Infraction Report that is presented to the Committee by the Secretary (or designee). At the same meeting, the Service Provider may make an oral presentation to the Committee in respect to the Infraction Report. The Service Provider will have sixty (60) minutes to make their oral presentation. The Service Provider is encouraged to provide all informationrelated to the infraction to be presented to the Committee, via the Secretary, at least one (1) week in advance of the meeting.

In advance of the meeting, the Service Provider can make a request to the Secretary, with justification, for an increase to the sixty (60) minute presentationtime. The Qualification Committee Chair will review the request and will either grant an extension, detailing the new presentation time limit, or deny the extension.

A ministry representative will have the opportunity to attend the meeting and listen to the information about the Infraction Report that is presented by the Service Provider to the Committee by the Secretary as well as the Service Provider's oral presentation to the Committee. During the oral presentation, all communication by the ministry representative and Service Provider to the Committee will be facilitated via the Secretary.

The Committee considers the Statement of Facts, responses to the Statement of Facts, the content from a presentation made by the Service Provider (as applicable), and will issue a final written decision.

Details regarding the Committee's role, purpose, mandate, membership and structure are accessible in the most recent edition of the "Qualification Committee Procedures" document.

#### Possible Actions for an Infraction Report:

The Committee will assess an Infraction Report, the Statement of Facts, and associated supporting documents and determine the most appropriate action to affect positive change and improve the Service Provider's performance. These available actions include:

- No Action, or
- Warning Letter, or
- Prevention Plan, or
- Disqualified bid suspensions for a specified period, and / or
- Actions specific to the infraction

When a disqualified bid suspension is imposed, its duration and effective dateswill also be decided by the Committee.

Detailed descriptions for the criteria used by the Committee with respect to the available actions (No Action, Warning Letter, Prevention Plan, Disqualification(s)) as well as the sanction's duration and effective dates are available in the most recent edition of the "Qualification Committee Procedures" document.

In the case of consortia, any sanction imposed by the Committee will be applied equally to all qualified Service Providers.

The written decision of the Committee regarding the infraction will include the following components and will be sent to the Service Provider and to the MTO lead office:

- i. Reason(s) for the decision and the basis for such findings.
- ii. Reference to the Assignment's provisions, if applicable.
- iii. If a sanction is imposed a statement will be included confirming that the Committee has given consideration to all other contractual consequences that have been or may be assessed against the Service Provider with respect to the infraction.

Sanctions are effective the date of the letter notifying the Service Provider of the Committee's decision. Decisions of the Committee are final, confidential and are available only to the Service Provider, Committee members, to the Regional Director and Regional Manager in the Region that issued the Infraction Report.

For details about the roles and responsibilities of the Qualification Committee, refer to Qualification Committee Procedures - January 2022 available at TechPubs site.

#### 6. REFERENCE DOCUMENTS

The following documents are available on the ministry's TechPubs site:

- Qualification Procedures for ContractorsEngineering Service Providers (ESPs) Policy and Guidelines
- Qualification Committee Procedures

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- <u>ContractorConsultant</u> Performance Rating Manual
- and Selection System (CPSS) Procedures Guide

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#### APPENDIX I

Ontario	Ministry of Transportation	WARNING OF INFRACTION REPORT
SERVICE PROVID	ER:	ASSIGNMENT NO.:
REGION:	HWY NO:	LOCATION:

#### **INSTRUCTIONS**

#### <u>TO</u> REGION:

1. The Warning of Infraction is to include the following components:

- Description of subject activity of the Service Provider, date and location.
- What is the Assignment term and condition/clause(s) violated, as applicable?
- When did the Service Provider violate the Assignment term and condition/clause(s)?
- Explanation of how the subject activity is contrary to contract requirements.
- List of previous verbal warnings or/and written warnings and to whom was it given (attachcopies as applicable).
- Explanation of any corrective action taken by the Service Provider to modify theiroperations, as applicable.
- Cost description of impact of subject conduct, if applicable and if known.
- Attach copies of the Service Provider's written responses to prior notices, if applicable.
- Statement of whether the matter constituted a reportable event to a governing / regulatory authority including: Ministry of Environment, Ministry of Natural Resources and Forestry, Ministry of Labour, Fisheries and Oceans Canada, Conservation Authorities, or othergoverning / regulating authority (attach a copy of the incident report from thegoverning/regulatory authority, if applicable).
- 2. Present the completed form to the Service Provider's Key Contact listed in RAQS and Project-Manager.
- 3. Send copy to the Service Provider's corporate office.
- Send copy electronically / fax / mail to the Secretary, Qualification Committee, Construction & Engineering Contracts Section, Ministry of Transportation, 301 St. Paul St., St. Catharines, ON L2R 7R4, Fax: 905-704-2040.

#### **TO SERVICE PROVIDER:**

Unless corrective action is taken, the ministry will issue an Infraction Report, which will be assessed by Qualification Committee and may have an impact on the Service Provider's-

qualification rating. The Service Provider is encouraged to act immediately and contact the MTO's Project Manager/Agreement Administrator to arrange for a meeting to discuss this matter.

Propared by:	Title	Date:	
ricparcu by.	THE.	Date.	

#### APPENDIX II

SERVICE PROVIDER: \_\_\_\_\_\_ASSIGNMENT NO.: \_\_\_\_\_

REGION: \_\_\_\_\_\_ HWY NO: \_\_\_\_\_LOCATION: \_\_\_\_\_

#### **INSTRUCTIONS**

#### TO-REGION:

- 1. Complete form by marking "X" in applicable boxes.
- 2. Provide supporting evidence of the infraction, in the form of a chronological summary as anattachment.
- 3. The following should be addressed to support the Consultant's Infraction Report:
  - Description of subject activity of the Service Provider, date and location.
  - What is the Assignment term and condition/clause(s) violated?
  - When did the Service Provider violate the term and condition/clause(s)?
  - Explanation of how the subject activity is contrary to contractual requirements.
  - What action did the ministry take (e.g. verbal and/or written warnings, Warning of Infraction)? List of previous verbal warnings or/and written warnings and to whom was it given and Warning of Infraction (attach copies as applicable).
  - Explanation of any corrective action taken by the Service Provider, as applicable.
  - Cost description of impact of subject conduct, if applicable and if known.
  - State and attach copies of Service Provider written responses to prior notices, if applicable.
  - Statement of whether the matter constituted a reportable event to a governing/regulatory authorityincluding: Ministry of Environment, Ministry of Natural Resources and Forestry, Department of Oceanand Fisheries and Oceans Canada, Ministry of Labour, Conservation Authorities (attach a copy of theincident report from the governing/regulatory authority, if applicable).
  - State if the subject of the Service Provider's Infraction Report (Infraction Report) is also the subject of a pre-existing dispute; if yes, state the status of the dispute.
- 4. All supporting evidence must be made available to the Service Provider upon issuing the infraction.
- 5. Hold meeting with the Service Provider to present Infraction Report<sup>2</sup>.
- 6. Forward one copy to Secretary, Qualification Committee, Construction and Engineering Contracts Section, Ministry of Transportation, 301 St. Paul St., St. Catharines, ON L2R 7R4, together with the minutes of the meeting to present the Infraction Report.

<sup>2</sup> An Infraction Report should be followed by a telephone call to explain the reasons for issuing the Report.

#### **TO SERVICE PROVIDER:**

Qualification Committee will deal with this Infraction Report. Any response or comments are to be sent to the Secretary, Qualification Committee within 15 business days of the receipt of this Infraction Report, with a copy to the Manager in the applicable office.

#### **TYPE OF INFRACTION:**

- (A) Poor quality of services attributable to Service Provider (or sub-Service Provider)
- (B) Failure to abide by the tendering requirements.
- (C) Failure to provide adequate organization, cooperation, personnel or equipment to performthe services.

- (C) Tender declarations that are incomplete, inaccurate, or are not adhered to.
- (D) Failure to discharge liabilities
- (E) Offering inducements to MTO Project Manager/Agreement Administrator.
- (D) Failure to comply with terms and conditions of the Assignment.
- (E) Wilful disregard of written instruction to correct/adjust services or practices.
- (F) Serious defects in quality of the services and deliverables.
- (H) Severe contractual breaches, including default
- (I) Failure to adhere to the specifications, special provisions, or any contract specific clause.
- (J) Failure to complete the Assignment deliverables in a timely manner.
- (K) Failure to follow direction given by the MTO Project Manager/Agreement Administrator.
- (L) Other circumstances which may lead to a deteriorated working relationship.

Prepared by:Title:	Date:
egional/Office Manager:	<del>Date:</del>

#### **APPENDIX III**

### **Addresses of Ministry of Transportation Offices**

Secretary, Qualification Committee
Ministry of Transportation
Contract Management Office, Construction and Engineering Section 301
St. Paul St.
St. Catharines, ON-
L2R 7R4
General Enquiries 905-704-2203
Fax 905 704 2040
Ministry of Transportation (West Region)-
<del>659 Exeter Rd.</del>
London, ON
NGE 1L3
Ministry of Transportation (Central Region) 1201
Wilson Avenue, Bldg D
Downsview, ON-
M3M 1J8
Ministry of Transportation (Eastern Region)
Postal Bag 4000
<del>1355 John Counter Blvd.</del>
Kingston, ON
<del>K7L 5A3</del>
Ministry of Transportation (Northeastern Region)-
447 McKeown Avenue
North Bay, ON P1B-
<del>959</del>
Ministry of Transportation (Northwestern Region)
615 South James St.
Thunder Bay, ON-
P7E 6P6
Ministry of Transportation (Head Office)
1201 Wilson Avenue, Bldg D Downsview,
<del>NO</del>
M3M 1J8
<del>or</del>
2 <sup>nd</sup> Floor, 301 St. Paul St.
St. Catharines, ON
L2R 7R4

Note: Use P.O. Box number for mail, and street address for courier deliveries.