

Our File/N/Réf.           A.3.3.482  
Your File/V/Réf.

DATE                        July 8, 1999

TO/DEST.                 The Chair and Members of Council

FROM/EXP.                A/Regional Solicitor

SUBJECT/OBJET           **LAND AMBULANCES HEALTH SERVICES YEAR 2000  
DIRECTIONS DOCUMENT - PHASE II  
RESPONSES TO ISSUES AND INQUIRIES**

---

PURPOSE

This memorandum is intended to supplement the corresponding report from the Medical Officer of Health and to provide some additional information and responses to issues raised by the members of the Community Services Committee in the course of considering the Land Ambulance Health Services Year 2000 Directions Document - Phase II Report.

BACKGROUND

During the consideration of the Land Ambulance Health Services report by the Community Services Committee on June 17, 1999, there was a significant amount of discussion concerning the corporate status of the two companies that qualified to participate in the recommended Request for Proposal process based on their responses to the Expression of Interest document. More specifically, there was discussion as to whether or not these two companies were American companies and whether or not the fact of entering into a contract with American owned companies would lead to potential problems for the Regional Corporation under the North American Free Trade Agreement ("NAFTA").

One of the motions that was carried by the Committee, with one dissent, called for an amendment to the departmental recommendations to require that an independent legal opinion be obtained on the NAFTA implications of contracting with an American owned company for ambulance services with a specific focus on any NAFTA requirements for compensation for lost profits.

In order to address the issues arising from the suggestion that the Regional Corporation would be contracting with American based companies, it is necessary to examine the corporate status of the two successful respondents to the Expression of Interest process. Canadian Medical Response has a full corporate name of Canadian Medical Response Limited and is incorporated under the Federal *Canada Business Corporations Act*. In terms of its overall corporate structure, it is a wholly owned subsidiary of Laidlaw Inc., and both Laidlaw Inc. and Canadian Medical Response

have head offices in Burlington, Ontario. Accordingly, both companies, for all purposes, can be considered to be Canadian companies.

The other successful respondent to the Expression of Interest process was Rural/Metro Ontario Medical Services. The full corporate name of this company is Rural/Metro of Ontario, Company and this corporation is incorporated under Nova Scotia legislation with a registered business name in Ontario of Rural/Metro Ontario Medical Services. Its head office is located in Halifax, Nova Scotia, with its principal place of business in Ontario being in Port Colborne. Again, this corporation is a Canadian corporation that is affiliated with the Rural/Metro Corporation based in the United States of America.

With respect to the issue of the NAFTA implications of contracting with an American company and possibly making a future decision to provide ambulance services at some point in the future through a Regional department or other public method of service delivery, the Legal Department requested an opinion from the Department of Foreign Affairs and International Trade. That department of the Federal Government offers a service of providing information and opinions on the applicable provisions of NAFTA that are relevant to certain fact situations, as well as interpretations of those sections of the trade agreement.

The opinion provided by the Department of Foreign Affairs and International Trade specified that there were three potential chapters of NAFTA that might apply to this situation. The three chapters were Chapters 10, 11 and 12. The Department of Foreign Affairs concluded that Chapter 10, which deals with government procurement, would not apply on the basis that NAFTA does not currently cover procurement by municipalities. It further concluded that Chapter 12, which deals with cross border trade services, would not be applicable to the ambulance service scenario. The Department of Foreign Affairs concluded that it is possible that Chapter 11, which deals with investment, could apply to a contract awarded to an enterprise under the control of United States investors to the extent that a contract could be considered to constitute an investment.

Based on the scenario of a United States parent company or its subsidiary making a claim for compensation based on NAFTA Article 1110 which deals with expropriation and compensation, the Department of Foreign Affairs and International Trade offered the opinion that the failure to renew an expired contract would be very unlikely to be found to be a form of expropriation of an investment. Therefore, it would also be very unlikely that such a scenario would result in the Regional Corporation being required to pay compensation.

The Department also offered the opinion that the reservation or exemption for Canada's social services that is contained in NAFTA would likely deny protection to an American investor complaining that the Regional Corporation may have acted in a manner inconsistent with the provisions of Chapter 11. This exemption represents a second grounds under which the Region would be protected from any investor claims.

It should be noted that the opinion of the Department of Foreign Affairs and International Trade cannot be relied on as a definitive legal opinion, however, it represents the opinion of a

Department that deals with NAFTA on an ongoing basis and which is in the practice of offering the service of providing opinions on the application of NAFTA. In the event that the recommendation to obtain a formal legal opinion from an outside firm is approved by Committee, the Legal Department will proceed to obtain such a formal opinion.

### CONCLUSION

The additional information provided in this memorandum is intended to assist members of Regional council in considering the recommendations forwarded by the Community Services Committee with respect to the Land Ambulance Health Services Year 2000 Directions Document - Phase II.

*Eric A. Johnston*  
*A/Regional Solicitor*

/bms