

M. C. 3 (2002-2003)

**IN THE MATTER OF THE INTENDED
CANCELLATION OF MOTOR CARRIER
CERTIFICATE NO. 3574 PURSUANT
TO S. 16(1) OF THE MOTOR CARRIER
ACT, R.S.N. 1990, CH. M-19
(THE "ACT")**

AND

**IN THE MATTER OF A HEARING INTO
SUCH INTENDED CANCELLATION AT
THE REQUEST OF THE CERTIFICATE
HOLDER FEWER'S HOLDINGS LTD.
PURSUANT TO S. 16(2) OF THE
ACT**

The within matter came on for hearing before a panel of the Board of Commissioners of Public Utilities (the "Board") on the 24th day of July, 2002 at the request of Fewer's Holdings Ltd. pursuant to s. 16(2) of the Motor Carrier Act, RSN 1990, ch. M-19, as amended (the Act).

The panel consisted of Commissioner William Finn, acting as Chairperson and Commissioner Raymond Pollett.

The hearing was assisted by Board Legal Counsel, Ms. Dwanda Newman, and Board Secretary, Ms. Cheryl Blundon acting as Clerk.

Also in attendance were Mr. Robert Fewer of Fewer's Holdings Ltd., together with Legal Counsel Mr. Paul Stokes, Q.C.

Mr. Neil Pittman attended as Legal Counsel for the Newfoundland and Labrador Ambulance Operators Association.

A number of Affidavits were filed prior to the hearing as follows:

1. Affidavit of Robert Byrne sworn July 23rd, 2002;
2. Affidavit of Tom Beckett sworn July 10th, 2002;
3. Affidavit of Dennis Davis sworn July 19th, 2002; and
4. Affidavit of Robert Fewer sworn July 15th, 2002.

Additionally prior to the hearing legal briefs were filed by Mr. Stokes on behalf of Fewer's Holdings Ltd. and by Mr. Pittman on behalf of the Newfoundland and Labrador Ambulance Operators Association.

Facts

As a result of information coming to the attention of the Board indicating that the holder of M.C. Certificate No. 3574 (the Certificate) was not the operator of the ambulance service provided for in the Certificate, a Notice was issued by the Board to Fewer's Funeral Home Ltd., the named holder of the Certificate, and Robert Fewer, dated the 1st day of March, 2002, pursuant to s. 16(1) of the Act that it was the intention of the Board to cancel the Certificate.

Upon receipt of the above Notice, Fewer's Holdings Ltd., under its former corporate name Fewer's Funeral Home Ltd., pursuant to s. 16(2) of the Act did request a hearing of the Board into the matter. Publication of Notice of said hearing as required pursuant to the Act having been completed the hearing commenced accordingly on July 24th, 2002 at the Board's office at St. John's, Newfoundland.

Evidence was presented at the hearing by the following persons:

1. Tom Beckett, Deputy Registrar of the Motor Registration Division, Department of Government Services and Lands;
2. Dennis Davis, Director of Emergency Health Services, Department of Health;
3. Robert Byrne, Director of Regulatory Affairs & Advisory Services, Public Utilities Board of Newfoundland; and
4. Robert Fewer, principal shareholder of Fewers Holdings Ltd.

While the Board has considered the evidence of all the witnesses including the prefiled briefs and affidavits it is the opinion of the Board that the oral evidence of Mr. Robert Fewer principal shareholder of both Fewer's Holdings Ltd. (formerly Fewer's Funeral Home Ltd.) and Fewer's Ambulance Service Ltd., sets forth an accurate and detailed accounting of the circumstances leading to the within hearing. In the opinion of the Board Mr. Fewer's evidence establishes the following points which are salient to the Board's findings and decision herein:

1. Fewer's Funeral Home Ltd. was issued M.C. Certificate No. 3574 in 1979 to provide ambulance service on the terms and conditions as set forth in the Certificate.
2. In 1987 Fewer's Funeral Home Ltd. following filing of Articles of Continuance pursuant to the Corporations Act changed its name from Fewer's Funeral Home Ltd. to Fewer's Holdings Ltd.
3. No notice of the change of name of Fewer's Funeral Home Ltd. was provided to the Board as required by s. 15(3) of the Act or indeed any notice of such change.

4. In February, 1985 Mr. Fewer caused to be incorporated a new company under the name Fewer's Ambulance Service Ltd. which company was incorporated for the purpose of and which corporation did in fact take over in its own right all management, operation and control of the ambulance service authorized to be carried on by Fewer's Funeral Home Ltd. under the Certificate with all billing for such service to the Department of Health being made by Fewer's Ambulance Service Ltd. there under and the total income derived at all times remaining solely an asset of Fewer's Ambulance Service Ltd.
5. Since the date of issuance of the Certificate the name of the holder of such Certificate, Fewer's Funeral Home Ltd. or indeed Fewer's Holdings Ltd. pursuant to its corporate name change, did not appear on any ambulance purporting to operate under the authority of such Certificate.
6. Notwithstanding which legal entity operated the ambulance service since the issue of the Certificate, ambulance service to the geographical location determined by the Certificate, has been constant and performed with a high degree of reliability and quality of service, a point which was also confirmed in the evidence of Dennis Davis, the Director of Emergency Health Services.
7. Implicit in Mr. Fewer's evidence is an acknowledgement that in respect of the ambulance operation there is no agency relationship between Fewer's Holdings Ltd. and Fewer's Ambulance Service Ltd. According to Mr. Fewer's evidence there is no relationship between the two companies. Since its incorporation, Fewer's Ambulance Service Ltd. has had and continues to have and exercise full control, management and operation of the ambulance service previously provided under the Certificate the only connection between the two companies being that the principal shareholder in each case is the same that being Robert Fewer.
8. Robert Fewer indicated that at the time of incorporating Fewer's Ambulance Service Ltd. in 1985 for the purpose of taking over the operation of the ambulance service previously provided by Fewer's Funeral Home Ltd., no formal application was made under the then current provisions of the Motor Carrier Act for transfer of the Certificate from Fewer's Funeral Home Ltd. to Fewer's Ambulance Service Ltd. Mr. Fewer stated he did not think it was necessary where in his words the companies involved were related. Mr. Fewer also stated in his evidence that he never did believe that any transfer of the Certificate had in fact ever been effected by the Board from Fewer's Funeral Home Ltd. to Fewer's Ambulance Service Ltd.
9. According to Mr. Fewer there was no intention to mislead the Board in transferring operation of the ambulance service to Fewer's Ambulance Service Ltd. Mr. Fewer stated that this was effected simply for the purpose of dividing and/or separating this activity together with various other activities formerly carried on by Fewer's Funeral Home Ltd., to other separate corporate entities incorporated by Mr. Fewer for the purpose of such division of his various enterprises.

The Board further notes that the responsibility for renewal of Certificates on a yearly basis under the Motor Carrier Act is by s. 13 of the Act the responsibility of the Registrar of Motor Vehicles.

Evidence was given by Mr. Beckett, Deputy Registrar of the Motor Registration Division, that no formal process existed within the Department to deal with renewal of Motor Carrier Certificates in respect of ambulance operations and that by some form of policy within the Department, a renewal of registration of an ambulance was deemed to be and constitute renewal of the Certificate. The Board notes that such an informal approach toward such renewal with no investigation or requirement of establishing that the renewal of registration was by the holder of a valid Certificate to begin with, was a legitimate cause of confusion to Mr. Fewer in his assessment of his compliance with the legal requirements and legal prerequisite to the operation of the ambulance service authorized under the Certificate.

On a consideration of the evidence as a whole, the Board finds that:

1. Fewer's Funeral Home Ltd. the issued Certificate holder of M.C. Certificate 3574 underwent a corporate name change in 1987 and is now operating under the name Fewer's Holdings Ltd.
2. Fewer's Holdings Ltd. is in violation of s. 21 of the Motor Carrier Act in having effectively transferred its ambulance operation to a company not authorized by the Certificate to conduct such operation.
3. Fewer's Holdings Ltd. since issuance of the Certificate and even before its transfer of the ambulance operation to Fewer's Ambulance Service Ltd. was and currently remains in violation of regulation 36 in that the name of the Certificate holder is not shown on ambulances as required by such regulation. While regulation 40 stipulates in respect of an ambulance operated by a motor carrier specified markings to appear on such ambulance, nothing in regulation 40 negates the requirement of regulation 36 in respect of a public service vehicle which pursuant to s. 4 of the Act includes an ambulance, to have affixed thereon the name of the Certificate holder on both sides of the vehicle.

4. Fewer's Holdings Ltd. is also in violation of s. 23 of the Act in that the company being the holder of a Certificate without first obtaining the approval of the Board did abandon the service provided for in the Certificate, notwithstanding that such service was continued to be provided by an unauthorized company.

There was no objection put forward by Counsel for the Newfoundland and Labrador Ambulance Operators Association to allow Mr. Fewer a limited time to assess the position of Fewer's Holdings Ltd. with a view to that company as the holder of the Certificate recommencing on a go forward basis the ambulance service authorized by that Certificate and it was agreed that Fewer's Holdings Ltd. would file with the Board a statement on or before August 8th, 2002 as to whether such company would be prepared to recommence full operation of the ambulance service under the Certificate, should the Board decide such action to be appropriate.

Fewer's Holdings Ltd. has indicated in a letter filed with the Board on August 12th, 2002 that it is prepared to recommence operation of the ambulance service in full compliance with the Motor Carrier Act and terms of the Certificate as originally issued.

Notwithstanding the violations found by the Board to exist the Board is of the opinion that such violations were not knowingly, repeated and intentional violations of the Act and Regulations by Fewer's Holdings Ltd. and that notwithstanding such violations the ambulance service provided although contrary to the Certificate as outlined above, was provided to the public in a manner which according to the evidence before the Board was always with a degree of quality by which the public was well served.

The Board, therefore, makes the following disposition and Order:

1. Motor Carrier Certificate No. 3574 shall be amended to indicate Fewer's Holdings Ltd., formerly Fewer's Funeral Home Ltd., as named holder thereof.
2. Fewer's Holdings Ltd. shall have until on or before the 31st day of December, 2002 to establish to the satisfaction of the Board that:
 - (a) Fewer's Holdings Ltd. has commenced full control, management and operation of the ambulance service authorized by the Certificate; and
 - (b) Fewer's Holdings Ltd. has effected full compliance with Regulation 36 in respect of all ambulances which shall be operated by Fewer's Holdings Ltd. as of the 30th day of November, 2002.
3. In the event that Fewer's Holdings Ltd. shall fail to establish to the satisfaction of the Board on or before December 31, 2002 those matters set forth in paragraph 2 above then in such event Motor Carrier Certificate No. 3574 shall be cancelled with effect from the 31st day of January, 2003.
4. Fewer's Holdings Ltd. shall be responsible for and shall pay to the Board forthwith all costs incurred by the Board in connection with the within hearing, including costs of the Board Legal Counsel and of any other Board employees while employed in or about the within hearing, from and after the date of filing by Fewer's Holdings Ltd. under its former name Fewer's Funeral Home Ltd. of a request for hearing in the within matter.

DATED at St. John's, Newfoundland and Labrador this 16th day of September 2002.

J. William Finn, Q.C.,
Commissioner.

Raymond A. Pollett
Commissioner.

G. Cheryl Blundon,
Director of Corporate Services and
Board Secretary.