



**DECISION OF THE  
GENERAL MANAGER  
LIQUOR CONTROL AND LICENSING BRANCH**

IN THE MATTER OF

A hearing pursuant to Section 20 of

**The Liquor Control and Licensing Act RSBC c. 267**

<b>Licensee:</b>	351051 B.C. Ltd. dba Arches Sports & Karaoke Lounge c/o Marble Arch Hotel 518 Richards Street Vancouver, BC
Case Number:	EH03-097
<b>Appearances:</b>	
For the Licensee	Mr. Danny Lowe Mr. Young Ho Jung Mr. Stephen Lee
For the Branch	Shahid Noorani
Enforcement Hearing Adjudicator	Suzan Beattie
Date of Hearing	October 30, 2003
Place of Hearing	Vancouver, B.C.
Date of Oral Decision	October 30, 2003
Date of Written Decision	November 10, 2003

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**Ministry of Public  
Safety and Solicitor  
General**

Liquor Control and  
Licensing Branch

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## INTRODUCTION

The licensee, 350151 B.C. Ltd holds liquor primary license No. 003641 for the Marble Arch Hotel establishment. The third party operator listed on the liquor primary licence, 644183 B.C. Ltd, operates the establishment's Arches Sports & Karaoke Lounge. The hours of operation on the license are Monday to Saturday from 11:00 A.M. to 1:00 A.M. and on Sunday from 11:00 A.M. - 12:00 Midnight.

The establishment is located in a business area with other food primary and liquor primary licensee's as well as commercial premises in the immediate area. It has 8 karaoke rooms and a capacity of 320 persons.

## ALLEGED CONTRAVENTION AND RECOMMENDED PENALTIES

The Liquor Control and Licensing Branch alleges that on Saturday, May 24, 2003, the licensee contravened section 35 of the *Liquor Control and Licensing Act* by permitting a minor to be on the premises where liquor is sold or kept, contrary to the *Act*. Schedule 4 of the *Liquor Control and Licensing Regulations*, provides a range of licence suspensions and monetary penalties for each contravention. For the contravention of section 35, the penalty range is one (1) to three (3) days or one thousand (\$1,000.00) to three thousand (\$3,000) dollars for the first contravention. In this case, the branch is recommending a two (2) day licence suspension. It recommends the suspension be served starting on a Saturday and continuing on successive business days until completed.

The relevant statutory provisions of the *Liquor Control and Licensing Act* state:

### **35 Minors on licensed premises**

A person who holds a licence under this Act or who sells liquor under the Liquor Distribution Act, or the person's employee, must not authorize or permit a minor to enter on or be on premises where liquor is sold or kept for sale except

- (a) If the minor is accompanied by a parent or guardian on premises where liquor is sold exclusively for consumption off the premises,
- (b) With lawful excuse, or
- (c) In prescribed circumstances.

### **ISSUE**

The licensee conceded that the contravention occurred but disputed the proposed two (2) day suspension penalty.

### **COMPLIANCE HISTORY**

There is no record of prior contraventions, offences or enforcement actions of this type for this licensee or this establishment within the year preceding this incident ("compliance history"). Therefore, this contravention, if proved, would be considered a first contravention for the purposes of the Penalty Schedule.

### **WITNESSES**

The branch called an Inspector as its witness. The Manager spoke on behalf of the licensee.

### **EXHIBITS**

The branch presented the following exhibit:

<b>Exhibit 1</b>	<b>Book of Documents</b>
Tab 1	Notice of Enforcement Action letter dated July 21, 2003
Tab 2	Contravention Notice B004053 dated May 25/03
Tab 3	Handwritten notes of an Inspector
Tab 4	Liquor License 3641 and Food Primary License 3641
Tab 5	Red-line floor plan for establishment
Tab 6	Application for a Permanent Change to Liquor License

- Tab 7 Letter from a witness to LCLB
- Tab 8 Letter from LCLB to Marble Arch Hotel
- Tab 9 Application for a Third party Operator
- Tab 10 Liquor Primary Inspection Interview Sheet
- Tab 11 Letter from LCLB to Marble Arch Hotel dated March 10/03
- Tab 12 Letter from LCLB to Marble Arch Hotel dated April 9/03
- Tab 13 Page 1-4 , 10-12 from the Liquor Primary License Terms and Conditions A Guide for Liquor Licensees in B.C.

## **EVIDENCE, PENALTY SUBMISSIONS AND DECISION**

### **Evidence**

The branch's evidence is contained in the narrative to the Notice of Enforcement Action. On Saturday May 24, 2003, a License Inspection Team comprising two members of the Vancouver City Police, three City Inspectors, a Fire Inspector and a Liquor Inspector conducted an inspection of the establishment.

During their inspection, a Minor was identified in a karaoke room where alcohol was being served and consumed. The minor entered the premise with her family and was participating in Karaoke. The Minor was seated with her Mother and her age was confirmed by a school identification card. A server had interacted with the minor and her family to take an order for non-alcoholic and alcoholic drinks and to set up the karaoke room. At the time of the inspection there was an alcoholic drink located in front of the minor. At no time did the Server request to see identification from the family members in this karaoke room.

The Inspector recommended a penalty in the mid-range because of the wilful neglect of the licensee to check for identification. A suspension penalty was recommended by the Inspector in the belief that a mid-range suspension was a "lessor" mid range penalty than a monetary penalty for the licensee.

## Submission

The licensee argued for a monetary penalty rather than a suspension penalty. It pointed out that there have been no subsequent contraventions and stated that it has increased door staff and control since the contravention.

## Decision

Pursuant to section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulations* and/or the terms and conditions of the licence, I have discretion to order one or more of the following enforcement actions:

- impose a suspension of the liquor licence for a period of time
- cancel a liquor licence
- impose terms and conditions to a licence or rescind or amend existing terms and conditions
- impose a monetary penalty
- order a licensee to transfer a licence

Imposing any penalty is discretionary. However, if I find that either a licence suspension or monetary penalty is warranted, I am bound to follow the minimum set out in Schedule 4 of the *Regulations*.

The *Regulations* provide for a graduated scale of penalties for contraventions of the *Act*. The graduated nature of the penalties is necessary for the consistent and vigorous enforcement of the provisions in the *Act* and *Regulations*.

The branch's primary goal in determining the appropriate penalty along the scale is achieving voluntary compliance. Among the factors that are considered in determining the appropriate penalty is whether there is a past history of warnings by the branch and/or the police, the seriousness of the contravention, the threat to public safety and the well being of the community.

In the circumstances of this case, I accept the Inspector's recommendation that a minor permitted on the premises is worthy of a penalty greater than the minimum in Schedule 4 of the *Regulations*.

The question then becomes whether a suspension penalty or a monetary penalty is appropriate in these circumstances. The difficulty with the licensee's submission is that a monetary penalty can be seen as a 'cost of doing business' and as such may not achieve the branch's goal of voluntary compliance.

Having considered all of the evidence and submissions, I have concluded that a monetary penalty in this case can be appropriate in achieving voluntary compliance. To ensure a monetary penalty is not simply the cost of doing business, and based on the licensee's comments, I exercise my discretion to increase the penalty to the maximum monetary penalty for a first contravention of three thousand (\$3,000.00) dollars.

#### **ORDER**

Pursuant to section 20(2) of the *Act*, concerning the LP Licence #022485, I order as follows:

For the contravention of section 35 of the *Liquor Control and Licensing Act* on Saturday, May 24, 2003, I order the licensee, 351051 B.C. Ltd. to pay a monetary penalty of three thousand (\$3,000) dollars to be paid no later than Wednesday, December 10, 2003.

*Original signed by*

Suzan Beattie  
Enforcement Hearing Adjudicator

Date November 10, 2003

cc: Vancouver Police Department

Liquor Control and Licensing Branch, Vancouver Regional Office  
Attention: Wendy Jones, Regional Manager

Liquor Control and Licensing Branch, Surrey Office  
Attention: Shahid Noorani, Branch Advocate