



Ban Smoking in Condos

By Armand Conanton January 21, 2011

There seems to be a renewed interest in making residential buildings completely smokeless, including in the individual suites. The recent article in the Ottawa Citizen, reports that Domicile Developments has decided to make their proposed Holland Avenue project completely smoke-free from the outset. According to the article, if Domicile is successful, then it will be the first new condo building in Ottawa to be smoke free. This makes sense for new corporations, but what about existing corporations?

Pippa Beck of the Non-Smokers' Rights Association was interviewed for the article and said that it is not impossible for older condominium corporations to change their governing laws to ban smoking. Beck said "You can amend the declaration with 80 percent of owners who have to vote in favour (to go smoke free), or with a bylaw, it has to be two thirds"



An article by Mitch Kowalski in the Financial Post, discusses how the residents of a Chicago condominium approved a bylaw that made the entire building smoke-free (common areas and in-suite) for several reasons including health, and to attain LEEDs certification.

Mitch mentions that a condo lawyer indicated that in Ontario, condo corporations may be able to ban smoking in the suites with a bylaw if it is deemed to be reasonable.

As much we would like to see smoking completely banned from condominium buildings, we do not agree that it can be accomplished with a by-law even if the Ontario Human Rights Tribunal was to make a favourable ruling. It has been our view that such a by-law would not be permitted under the Condominium Act, 1998, even if we all feel that it is "reasonable". While the issue has not been before the courts, we believe that the only way to have a complete in-suite ban is if it is in the declaration, either from the outset for new condo developments such as the one by Domicile, or for older corporations by way of amending their declaration (with an 80% written consent). In the later case then existing smokers would have to be grandfathered.

While we would like to be able to use a bylaw to ban in-suite smoking, until Ontario laws are changed, people suffering from second hand smoke, and condo corporations, will have to look at other legal remedies which will have to be determined based on the specific facts in each case.

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