

**Exposure to Drifting Second-hand Smoke
in Multi-Unit Dwellings**

Backgrounder

by

**Non-Smokers' Rights Association
Smoking and Health Action Foundation**

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Introduction

Who the Paper Is For

This document is intended to be a resource both for people who are exposed to second-hand smoke (SHS) in their home that is part of a multi-unit dwelling and for building owners/ landlords who want to know their rights regarding restricting smoking on their property or who have to respond to complaints about drifting smoke. For simplicity, the term “drifting smoke” will be used to refer to tobacco smoke that drifts or seeps into a residential unit from various sources:

- through open windows or doors (from a neighbour’s patio or balcony or from outdoor common areas)
- through electrical outlets, cable or phone jacks, ceiling fixtures
- through cracks and gaps around sinks, countertops, windows, doors, floors, walls, ceilings
- through the ventilation system.

The issue of drifting second-hand smoke in multi-unit apartments and condominiums is gaining prominence as society learns more about the dangers of exposure to SHS and as more public places become smoke-free. It is ironic that many Canadians can now go out and enjoy smoke-free experiences in bars, restaurants, and many other public places, only to be unwillingly exposed to polluted air at home. Although there are currently no laws that prohibit people from smoking in their own apartment or condominium, there is nonetheless a range of possible remedies for people faced with tobacco smoke drifting into their residence.

How the Paper Is Organized

This resource provides a thorough analysis of all aspects of the issue, from why second-hand smoke is a health concern to what you can do about it. The backgrounder is divided into four parts:

Part 1 provides an overview of the issue of drifting second-hand smoke.

Part 2 explores the science of second-hand smoke and its effects on the body.

Part 3 contains a range of options for action:

- 3(A)** provides options for tenants and condominium owners.

(Note: NSRA has a fact sheet summarizing this information.)

•**3(B)** provides options for landlords and condominium associations.

(Note: NSRA has a fact sheet summarizing this information.)

Part 4 summarizes and gives links to the key provincial/territorial laws that have a bearing on the issue, as well as providing contact information for the government and non-government organizations that deal with landlord-tenant issues.

Please note that two fact sheets are available from NSRA that summarize in question and answer format the key information provided in this backgrounder—one for tenants and one for landlords.

Part 1: Overview of the Issue

Great strides have been made in protecting people from the hazards of second-hand smoke in the public domain. Most provinces and territories now have laws in place to protect people from exposure in indoor workplaces and in most enclosed public places, including shopping malls, hospitals, banks, on public transit, and even in restaurants and bars. Some of these laws and numerous municipal bylaws also ban smoking in the common areas of apartment buildings and condominiums, such as hallways, stairwells, laundry rooms, corridors, and passageways. However, to date no legislative body has been prepared to address the issue of adults smoking in their own homes, regardless of whether the smoke affects other people. Drifting SHS in multi-unit private dwellings is a serious health hazard for many. In the absence of full cooperation from smoking tenants and landlords, the need increases for tribunals, courts, and lawmakers to address the issue.

A Question of Rights

Fighting for the right to breathe clean air in your own apartment or condominium can be a confusing undertaking with no clear path to success. Many would argue that the issue crosses the line by infringing on the rights of smokers in their own homes. For as non-smokers have enjoyed increasingly more smoke-free workplaces and public places, some smokers have perceived their rights as rapidly being usurped.

Contrary to the claims of smokers' rights groups, however, the *Canadian Charter of Rights and Freedoms* does not provide protection against discrimination as a smoker.¹ The Charter does not recognize smokers as a group suffering social, political, or legal disadvantage in our society. Smoking is not considered a physical disability, since addiction to nicotine is not considered a permanent condition, because it can be overcome successfully by many people. In addition, smoking is not the only way to feed an addiction to nicotine—there are nicotine replacement therapies like the patch or gum, as well as a variety of smokeless tobacco products. Just because someone exercises their freedom to smoke does not mean they have an absolute *right* to smoke.

On the other side of the issue are those who argue that they have the right not to be exposed to second-hand smoke. While this right is not absolute, and the law with respect to private spaces has not caught up to the protection afforded people in public places and workplaces, there are a number of avenues that can be pursued when dealing with drifting SHS. Options range from simple initiatives like discussing the problem directly with your neighbours who smoke to convincing the landlord to ban smoking to going to court.

In addition to the options available to tenants, landlords and management boards have rights, including the legal right to designate specific apartment units or entire buildings as non-smoking. Many landlords are unaware of this important fact. There are many benefits to designating a building 100% smoke-free, including decreased risk of fire, less maintenance and upkeep, lower insurance costs, and less chance of non-smokers breaking their leases due to unwanted exposure to drifting smoke.

Part 2: The Health Effects of Exposure to Second-hand Smoke

What Is Second-hand Smoke

Second-hand smoke is more than a nuisance—it is a toxic mix of more than 4,000 chemicals. In 1992 the U.S. Environmental Protection Agency (EPA) classified second-hand smoke as a “Group A” carcinogen. This category is reserved for the most dangerous compounds that have been proven to cause cancer in humans.² Over fifty cancer-causing chemicals have been found in second-hand smoke, including the following:³

- arsenic
- cadmium
- benzene
- vinyl chloride

SHS is actually composed of two kinds of smoke:

- mainstream smoke** (MS)—what the smoker exhales after taking a puff, and
- sidestream smoke** (SS)—the smoke emitted from the burning end of the cigarette.

Most of SHS is sidestream smoke, because per cigarette, more tobacco is consumed when it is smoldering between puffs. Sidestream smoke contains higher concentrations of certain chemicals than the smoke inhaled by the smoker, sometimes up to ten times higher, primarily because sidestream smoke is produced at lower temperatures than mainstream smoke.⁴ Think of a lit cigarette as a small incinerator that operates at temperatures that are not high enough to completely burn the tobacco. The result of this incomplete combustion is thousands of harmful chemical by-products, both gases (including carbon monoxide, formaldehyde, ammonia, nitrogen oxides, hydrogen cyanide, and vinyl chloride) and solid particles (including “tar” and nicotine).

Non-smokers can be exposed to tobacco smoke directly and indirectly. Direct exposure occurs when a non-smoker is present in a room where cigarettes are being smoked. Indirect exposure—the complaint of non-smoking tenants—occurs for a period of time after smoking has taken place and has two possible sources:

1. Residual airborne tobacco smoke.
2. The re-emission or “off-gassing” of tobacco smoke from certain objects. Carpets, draperies, and various soft furnishings are particularly prone to absorbing

tobacco smoke and then re-emitting it into the air over time.

Indoor Environmental Persistence

It is very difficult to determine how long the chemicals in cigarette smoke persist in an indoor environment after someone has smoked a cigarette. James Repace, a former senior scientist with the U.S Environmental Protection Agency and a world-renowned expert in second-hand smoke, has concluded that second-hand smoke “can persist for months depending upon the sorbency of the surfaces.”⁵ Sorbency refers to how likely one substance will take up or hold another, either by *absorption* (one substance permeates another) or by *adsorption* (gas molecules stick to a solid surface). Concentrations of second-hand smoke constituents decline over time after smoking has stopped, but they can persist at perceptible and/or measurable levels for months or years in an indoor space where a considerable amount of smoking has occurred.⁶ *Perceptible* means that the tobacco smoke can be seen or smelled. *Measurable* means the tobacco smoke can be measured using sensitive chemical samplers, although it may no longer be perceptible to humans. In other words, chemicals can remain in the environment long after they are detectable by the senses.

The indoor concentration of a constituent of second-hand smoke at a given time depends upon numerous factors:⁷

- the number of cigarettes being smoked
- the rate of emission of the constituent from sidestream and mainstream smoke
- the volume of air into which the tobacco smoke is emitted
- the rate of removal of the constituent by ventilation
- the rate of deposition and sorption
- the desorption and re-emission (off-gassing) from indoor surfaces.

These factors influence each other in complex and dynamic ways.⁸ For example, studies have demonstrated that sorption can strongly alter concentrations of some tobacco smoke constituents regardless of ventilation rates.^{9,10} One experiment on the effect of adsorption and absorption on exposure to second-hand smoke found that short-term adsorption to indoor surfaces reduced exposure to certain SHS chemicals while smoking was taking place, whereas later reemission increased concentrations hours after smoking ended. More than half of daily exposure to chemicals with high rates of sorption occurred during non-smoking periods from increased reemission.¹¹ The bottom line is that there are no exact answers regarding how long the chemicals in tobacco smoke persist, either individually or collectively in the form of second-hand smoke.

Given the complex set of factors that influence the environmental persistence of second-hand smoke, it is very difficult to measure an individual's exposure to second-hand smoke over time. It is likewise difficult to measure short-term exposure because the chemicals that are typically used as "markers" of second-hand smoke break down at different rates from many of the other chemicals in SHS. For example, nicotine and cotinine (a by-product of nicotine exposure that is found in the blood, urine, hair, and saliva) are often used as "markers" because tobacco smoke is the primary source of nicotine; however, nicotine decays much more quickly than other chemicals in SHS and therefore is only a reliable measure of exposure in the immediate past.¹² The argument that the dose of toxins inhaled by a non-smoker from second-hand smoke is miniscule compared to what a smoker inhales directly is often based on measurements of the dose of just one or a few of the 4,000 chemicals in second-hand smoke. Researchers caution that people who oppose controls on second-hand smoke often make their case by choosing constituents with low absorption or rapid clearance.¹³

Few issues have been subject to as many scientifically rigorous reviews as SHS. The message from a sea of authoritative reports is clear, consistent, and unanimous—all exposure to SHS is harmful, and therefore involuntary exposure should be eliminated. See Appendix 1 for a list of major studies on SHS that all reach this conclusion.

Effects on the Body

Exposure to second-hand smoke is the third leading cause of preventable death in Canada, after smoking and alcohol abuse.¹⁴ Health Canada estimates that every year, some 700 non-smokers will die of heart disease,¹⁵ and 300 will die of lung cancer as a result of prolonged exposure to second-hand smoke.¹⁶ These numbers are conservative, as the studies on which they are based only considered SHS exposure in the home and not in the workplace. Research also shows that there is a dose-response relationship between exposure to SHS and its affect on health. This means that the more tobacco smoke you are exposed to and the longer you are exposed, the greater the risk to your health. Numerous reputable health and scientific agencies, including the World Health Organization and the U.S. Environmental Protection Agency have concluded that there is *no* safe level of exposure to second-hand smoke.¹⁷

Very little is known about the health consequences of the off-gassing of second-hand smoke. One scientist believes that a couple of weeks after a single smoking event, the airborne concentrations of SHS constituents are low enough that they pose a much smaller risk than from other environmental contaminants such as breathing polluted air while driving on a highway.¹⁸ However, exposure to drifting SHS in multi-unit dwellings is generally not an isolated event. In many cases, non-smoking tenants are regularly

exposed both to “fresh” SHS drifting into their home as well as to the chemicals off-gassing from surfaces in the apartment or condo. In addition, little is known about the potential health consequences of absorbing the constituents of second-hand smoke through the skin, for example, by a baby crawling on a tobacco contaminated floor.

Short-Term Effects

The most noticeable short-term consequences of exposure to second-hand smoke are the irritant effects, particularly irritation of the eyes, nose, throat, and respiratory system. Many non-smokers also report headache, dizziness, and nausea when exposed to cigarette smoke. A good ventilation system can reduce or eliminate these irritant effects, but ventilation cannot reduce to an acceptable level the toxins that damage health.

The impact on health in the short-term is more serious than mere irritation, however. Brief exposure increases carbon monoxide levels in the blood, which can trigger angina in people with coronary heart disease. Research shows that brief exposure can also produce noticeable changes, particularly endothelial dysfunction of the coronary circulation, in the cardiovascular system of people with no history of heart problems. Endothelial dysfunction is an early process of atherosclerosis, or hardening of the arteries.¹⁹

Recent research has found that even intermittent exposure to second-hand smoke decreases blood flow to wounds. This contributes to abnormal healing and explains in part why people who are regularly exposed to second-hand smoke suffer from slow healing and increased scarring of wounds, similar to smokers themselves.²⁰

Individuals with the following chronic health conditions are particularly vulnerable to second-hand smoke:²¹

- diabetes
- high blood pressure
- vascular disease
- asthma
- bronchitis
- emphysema.

Effects on Children

Children are especially vulnerable to exposure to second-hand smoke, for several reasons:

- Their bodies are still developing.

- They have smaller airways.
- They breathe at a faster rate.
- They have more lung area per body size than adults.
- They engage in activities, such as crawling and mouthing objects, that may put them in greater contact with contaminants in the environment.
- They spend more time doing vigorous activities than adults.^{22,23}

Exposure to second-hand smoke has been proven to *cause* the following diseases and conditions in children:²⁴

- impairment of fetal growth, including low birth weight (associated with many well-known problems for infants, including stillbirth or death shortly after birth)
- Sudden Infant Death Syndrome (SIDS)
- chronic respiratory symptoms, such as wheeze, cough, and breathlessness
- lower respiratory tract infections, including bronchitis and pneumonia
- middle ear infections
- asthma
- worsening of asthma symptoms/asthma attacks.

Research has also established an *association* between exposure to second-hand smoke and decreased lung function, exacerbation of cystic fibrosis, and cognitive and behavioural disorders among children.²⁵

Long-Term Effects

Exposure to second-hand smoke is responsible for substantial illness, loss of quality of life, and death among adults. A large body of reputable scientific research demonstrates that exposure to second-hand is a *cause* of the following diseases in adults:²⁶

- lung cancer
- nasal sinus cancer
- heart disease.

Research also shows a strong *association* between second-hand smoke and the following conditions, with evidence growing that SHS exposure is a *direct cause*:²⁷

- breast cancer
- cervical cancer
- stroke
- exacerbation of cystic fibrosis

- decreased lung function
- miscarriage.

The Bottom Line

Many of the studies of the health effects of second-hand smoke are of non-smokers who live with smokers; however, reputable health organizations worldwide have concluded that there is no safe level of exposure to second-hand smoke.

There is a dose-response relationship to SHS exposure—that is, the more a person is exposed to SHS, the more harm is being done to their tissues.

Non-smoking tenants who experience drifting SHS in their own homes likely do so on a regular basis, thus being exposed both to airborne SHS and to the constituents that are off-gassing from their carpets, draperies, furniture, etc.

The length of time for a room or dwelling to off-gas cannot be precisely measured, although experts agree that it could take weeks or months, depending on the concentration of SHS.

The effects of exposure to drifting SHS are simply not known. Studies looking at the short-term effects of SHS exposure in healthy non-smokers reveal early signs of hardening of the arteries and inflammation of breathing passages. Exposure to second-hand smoke is a major cause of illness and loss of quality of life for children and adults with chronic conditions such as asthma, high blood pressure, and emphysema. Long-term exposure to SHS increases risks of heart disease, lung cancer, and nasal sinus cancer.

Part 3(A): Options for Action by Tenants/Condominium Owners

There are many options available to tenants/condominium owners who are faced with the problem of second-hand smoke infiltrating their home:

Discuss the problem directly with your neighbours who smoke to reach a mutually agreeable solution.

Caulk openings and cracks, such as around electrical outlets, cable and phone jacks, pipes, sinks, doors, windows, floors, and ceilings.

Check with the local public health department to see whether there is a local bylaw or provincial law banning smoking in common areas of multi-unit dwellings and/or to seek enforcement of this provision.

Convince the landlord to take action, such as banning smoking in the building.

Take your problem to the provincial/territorial body established to resolve disputes between landlords and tenants.

Go to court.

An important first step is to document the problem, including when and where you smell smoke and any adverse health effects you experience as a result. You should also carefully document all conversations that you have and all actions that you take. Clarify your goals beyond wanting to breathe smoke-free air and develop a number of scenarios or solutions that can help you get there. Being able to articulate exactly what you would like and how you would like to see it happen will be of great benefit when you speak with others. Keep in mind that finding a solution that works for you may require multiple steps and that as with any dispute, legal action should be considered as a last resort.

First Steps – Determining the Source of the Problem

Try to determine where the smoke is entering your apartment or condo. Look for cracks and gaps between the walls and floor and around windows and doors as well as open spaces around pipes or electrical work and under countertops and sinks. If there is an obvious spot where the smoke is coming in, you can ask the landlord to address the problem or fix it yourself. Try sealing the gaps with latex caulking or spray foam, blocking off the air infiltration with something like thermal tape, or adding new weatherstripping around doors. (Consult a guide on how to reduce air leakage into a home for detailed

information that you can adapt to minimize the infiltration of drifting smoke into your unit.²⁸) This might be all that you need to do to rectify the situation in the short term.

If you know who is smoking and you have reason to believe that they will be receptive to you, approach them directly to talk about the situation. They may be completely unaware that their smoking is affecting others. Don't assume that they know about the dangers of second-hand smoke exposure. Share with them what you have learned. Your neighbour might be willing to negotiate a smoking arrangement with which you can both be satisfied.

Don't be surprised, however, if your neighbour is uncooperative, even if your first interaction was positive. Most smokers are addicted to nicotine, and addiction is a very complicated issue. Your neighbour may desperately want to quit but can't, and may lash out in frustration. Alternatively, your neighbour may have a siege mentality and feel that after being denied the opportunity to smoke in public places, they will exercise their freedom to smoke in their own homes no matter what!

Investigating Your Options

Before you take further action, you will want to find out what solutions are available to you. Smoking may already be prohibited in the common areas of your building, either under the terms of your lease, under a local smoke-free bylaw, or under a provincial/territorial law that bans smoking in public places. To find out whether smoking is banned in any part of multi-unit dwellings under a local bylaw or provincial/territorial law, call your public health department. Or check the website of your municipal government, since most post their key bylaws. For information on relevant provincial/territorial laws, see Section 4 of this backgrounder.

If your lease bans smoking in common areas, contact your landlord immediately when you notice someone smoking in these areas and/or present the landlord with a list detailing these incidents. Request that the landlord post no-smoking signs in all of the common areas of your building where smoking is not permitted. Signs can be obtained from your municipality or public health unit.

If a local bylaw bans smoking in common areas, contact bylaw enforcement and make a complaint. They will investigate the complaint and ensure that the necessary no-smoking signage is posted around the building.

If a provincial/territorial law bans smoking in common areas of multi-unit dwellings, contact the relevant enforcement authorities. Section 4 provides a list of applicable provincial/territorial smoke-free laws and contact information regarding complaints.

If people are smoking in their own units but are leaving their front doors open, this may be a violation of municipal fire codes. Contact your local fire department, explain the situation, and ask for guidance.

If the smoke appears to be coming from the ventilation system, the central ventilation system in the building may not be working properly. If this is the case, the building may not be “up to code,” that is, it may not comply with the requirements of the provincial building code. Ask your landlord or condo board to check into the ventilation problem. If that proves unsatisfactory, contact your municipal government licensing office or property standards office to report a possible violation of property standards bylaws or the *Municipal Code*. (Check the Blue Pages of your local telephone directory under the heading “Licences and Permits” or search your city’s website under “property standards.”) Although getting the building up to code won’t stop tenants from smoking, it could help improve the air quality in your private unit. It is important to note that while improved ventilation can remove the odour of tobacco smoke and the source of eye and throat irritation, no ventilation system is capable of reducing exposure to the many toxic chemicals in second-hand smoke to an acceptable level.

Another possible solution is to install a HEPA-filtered heat exchanger. The idea is to create positive indoor air pressure by using the fan to force fresh air into your unit, thus preventing drifting smoke from entering. For this to work you will have to keep your windows closed and your windows and doors will need to be well sealed. There are a number of downsides to this option. Positive pressure may cause condensation problems, depending on the climate where you live and the ventilation of your unit. Before considering this solution, check your lease, your co-op agreement, or the bylaws of your condominium to see if it is permitted. Many high-rise apartment/condominium buildings have pressurisation systems in the corridors to control the transfer of odours between units and provide fresh air to replace air exhausted by kitchen and bathroom exhaust fans. Pressuring your own unit may interfere with the ventilation system of your building. Then consult with a ventilation expert to ensure that the installation and operation of the heat exchanger complies with the requirements of the building code.

Advocating for a Smoke-Free Building

As a step toward a more complete solution, talk to other residents of your building to find out if others are also bothered by tobacco smoke infiltrating their units. Since the vast majority of Canadians—80%—do not smoke,²⁹ you will likely find many allies willing to support your efforts. Conduct a formal survey of residents or start a petition for a smoke-free building or for a smoking policy that will be acceptable to most tenants.

Another potential source of support is a tenant advocacy organization. Operating primarily in larger cities, these organizations provide a variety of services to tenants, including explaining tenants rights. (See Section 4 for a list of provincial tenants' associations, or check with your provincial/territorial rental authority to find out if a tenant advocacy group operates in your community.) Keep in mind, however, that most tenant advocacy groups do not deal with issues that they regard as personal disputes between tenants. To date, drifting second-hand smoke has largely been considered a question of tenant versus tenant. A tenant advocacy organization would be more inclined to get involved if the problem stemmed from a landlord not meeting his agreed upon responsibility, for example, by failing to enforce a smoking ban in a lease.

At that the same time as you are recruiting supporters, you will also want to be gathering solid evidence of the harm caused by second-hand smoke and the exposure to drifting second-hand smoke endured by tenants of your building. Be sure to document all conversations you have and all actions that you take:

Speak with your family doctor about getting a letter attesting to the fact that you have an existing medical condition that is exacerbated by second-hand smoke. Encourage other tenants to do the same.

Contact your local public health department and ask to speak with someone who works in tobacco control. It is likely that they have already helped other people in your situation. If your public health department does not have a tobacco specialist, a public health nurse may be able to assist you. Request a letter signed by the Medical Officer of Health spelling out the dangers of exposure to second-hand smoke. Letters of support from health authorities will strengthen your case when you approach your landlord or condo management board seeking a smoking ban.

Put together a fact sheet on the dangers of exposure to second-hand smoke. The public health department can provide you with information, as can health organizations such as the Non-Smokers' Rights Association and the Canadian Cancer Society. Landlords and condo management boards may be more receptive to your message when they understand that they may be held liable for knowingly allowing tenants to be exposed to a health hazard.

Once you have recruited support and developed a solid case, you are ready to talk to your landlord or condo management board about designating the building as 100% smoke-free. If there is resistance to a complete ban, there are alternatives that would nonetheless reduce the exposure of tenants to drifting smoke:

The landlord or management board could designate certain units as smoking units,

thereby grouping the smokers together and restricting smoking to a specific area of the building.

The smoking ban could be phased in, by designating the building as smoke-free to new tenants. This way, as old tenants who smoke move out and new non-smoking tenants move in, the building would gradually become 100% smoke-free.

Breaking Your Lease

If you are a renter, and if all of your efforts to date have not resolved the problem of tobacco smoke infiltrating your residence, you may decide that the easiest option is to move out. This may involve breaking your lease, which can involve penalties to you. Before you take this step, read up on the residential tenancy legislation in your province/territory and make sure you know your rights and obligations. (See Section 4 for information about the relevant legislation in your province/territory.)

Draft a letter to your landlord explaining the situation and describing all the steps you have taken to try to rectify the problem. Try to limit the letter to one page. Draft the letter as if you were writing it to a judge. Explain the nature of the problem and your preferred solution, and give a reasonable deadline for a response. Then have your letter reviewed by a lawyer, a legal worker at a community legal aid clinic, or someone whose business acumen you respect.

Attach a letter from the Medical Officer of Health or your own doctor describing the health consequences of exposure to second-hand smoke in general terms and/or to you personally.

If your landlord does not respond within the specified time limit, write him/her one more time, suggesting that the lack of a reasonable response will leave you with no option but to seek the direction of a court.

Go to your local small claims court and get two sets of claim forms (one for practice). Discuss the process with a staff person there during a quiet time. Other people have gone this route and won. Keep a record of your expenses if you would like to have your costs recovered.

When searching for a new apartment, raise the issue of second-hand smoke when talking with the landlord, landlord's agent, superintendent, or other tenants, and make a note of any assurances that you are given. (Be careful not to be too aggressive about the issue, or you may not be accepted as a tenant!)

Last Resorts (When You Can't or Don't Want to Move)

Administrative Tribunal – Residential Tenancy

All provinces and territories have a body that has been established to administer the provincial/territorial residential tenancy law and deal with disputes between tenants and landlords. Section 4 provides information on the relevant provisions in the legislation, as well as contact information for the dispute resolution body in each province and territory.

First check your lease to see if it specifies that smoking is restricted in certain places. Even if the lease does not mention smoking, however, there are a number of clauses that may be relevant to your problem of drifting second-hand smoke. Most rental agreements and provincial/territorial tenancy laws specify that the renter is entitled to “quiet enjoyment” of their residence and that it must be “fit for human habitation.” It is conceivable that you could win a case based on the argument that the second-hand smoke infiltrating your unit destroys your enjoyment of your property. The rental authority, however, may be reluctant to set a precedent in this area.

Administrative Tribunal – Public Health

Every province and territory has local authorities empowered to protect public health. These public health authorities are typically responsible for enforcing well-accepted regulations such as a sanitary code, housing code, landlord/tenant regulation, and municipal code. These regulations usually list different kinds of violations and then conclude with a broad “catch all” clause that permits the local authority to remedy unlisted health problems. While likely not a specified violation (*per se* violation), the infiltration of second-hand smoke could be actionable under a “catch all” clause, particularly given the breadth of research on the health effects of exposure to SHS.³⁰

Taking the administrative route is usually less time-consuming than going to court.³¹ As well, this approach relies on the scientific expertise of a government agency and avoids relying on legal expertise and a confrontation between private parties. Rather than questioning the rights of smokers to privacy in their own home, the approach focuses on the duty of the landlord or management board to provide safe living conditions for non-smoking tenants. It is important to note, however, that being successful with this approach depends on the interest and cooperation of the government agency involved. Even if a relevant provision exists, your first challenge will be convincing the agency to support you.³²

Litigation

Going to court is not an optimal route to take—it can be time-consuming and expensive and it pits private parties against each other, whether tenant vs. tenant or tenant vs. landlord. If all else fails, however, you may want to consider litigation. Sometimes all that is needed is the threat of court action for a solution to be found. And even where legal action is pursued (as it has been in states throughout the U.S.), most cases are settled, with only a handful of cases involving a judgment being rendered.”³³

If you are interested in seeking legal redress, you will need to seek legal counsel. A body of case law is growing that holds management responsible for exposing tenants to second-hand smoke. As discussed earlier, first check your lease to see if it specifies that smoking is restricted anywhere in or around your building. Even if the lease does not mention smoking, however, there are a number of clauses that may be relevant to your problem of drifting second-hand smoke. Most rental agreements and provincial/territorial tenancy laws specify that the renter is entitled to “quiet enjoyment” of their residence and that it must be “fit for human habitation.” Tenants have also sued on the basis of negligence, harassment, battery, and intentional infliction of emotional distress.³⁴

For more information on the provisions of provincial/territorial laws that may apply to your problem of drifting second-hand smoke, see Section 4.

Please note that none of this information is intended to substitute for professional legal advice, nor is the Non-Smokers' Rights Association in a position to litigate on behalf of individuals or groups.

Part 3(B): Options for Action by Property Owners/Landlords/Condominium Associations

Rights of Property Owners

In Canada there is no constitutionally-guaranteed *right* to smoke. The Canadian *Charter of Rights and Freedoms* does not provide protection against discrimination as a smoker. The *Charter* does not recognize smokers as a group suffering social, political, or legal disadvantage in our society. Smoking is not considered a physical disability, because addiction to nicotine is not considered a permanent condition. Nicotine addiction can be overcome successfully by most people, or it can be satisfied by means other than smoking, for example, by using nicotine replacement therapies like the patch or gum or a smokeless tobacco product. Just because someone exercises their *choice* to smoke does not mean they have an absolute *right* to smoke.

As a general rule, landlords are permitted to impose restrictions on their tenants unless the restrictions violate existing laws or are discriminatory. Building/condominium owners and home owners who rent self-contained apartments in their homes have the legal right to designate specific apartment units or entire buildings as non-smoking and to rent only to non-smoking tenants. Many property owners and landlords are unaware of this important fact. A smoke-free policy is no different than a policy that prohibits pets or loud music or that protects the well-being of other tenants. Common law generally grants owners the right—and in some cases the obligation—to protect other tenants and the owner's property.³⁵

There are many benefits to designating a building 100 % smoke-free:

- Reduced risk of fire
- Lower insurance costs
- Lower maintenance costs
- Reduced painting frequency and costs
- Less chance of non-smokers breaking their leases due to unwanted exposure to drifting smoke
- Less chance of being sued by tenants over harm to health from exposure to second-hand smoke
- Increased marketability—a large majority of Canadians are non-smokers and smoke-free properties are in demand both in the resale and rental markets.

How To Go Smoke-Free

In the case of an existing building with tenants, the approach to minimizing drifting second-hand smoke that is likely to meet with the least resistance, particularly if some residents smoke, is a stepped approach.

A recommended first step is to conduct a brief survey of your residents to discover how many smoke and where they usually smoke, to understand the extent to which drifting second-hand smoke is a problem, and to assess their reaction to possible restrictions on smoking in the building or complex. A question such as “Would you prefer to live in a totally no-smoking section or building including the units and the balconies?” would identify which sections or buildings could become non-smoking most easily.

Following the survey, a logical next step would be to transition the buildings that you intend to designate as non-smoking. There are several ways to do this. Whatever approach you take, it is important to keep tenants informed of your intentions and the reasons for the change. Don’t assume that everyone is aware of the risks of second-hand smoke exposure.

One way to transition to smoke-free is to begin by designating the common areas, both inside and outside the building, as smoke-free. It may be useful, however, to set up a smoking area outside in a location where the smoke will not affect non-smoking residents. Make sure that the smoking area is not part of an outdoor recreation area. Send a letter to all tenants to advise them of the policy change. The letter could say something like, “Due to the known health effects of second-hand tobacco smoke and the fact that smoke drifts into adjacent units through cracks, ventilation, windows and doors, as of (date), smoking will no longer be permitted in the following areas (list areas where smoking is banned).” You would then explain how the new policy will be enforced and call for everyone’s cooperation.³⁶

A second step, following a ban on smoking in common areas, could be to designate certain units or buildings in a large complex as smoke-free. Tenants could be moved so that non-smokers are separated physically as much as possible from smokers. In this scenario, the landlord would likely have to pay for the moving expenses, but this may save money in the long run. This approach reduces or eliminates tenants’ unwanted exposure to second-hand smoke, while still providing housing for those who choose to smoke. It also reduces complaints about drifting second-hand smoke and resultant feuds between tenants.³⁷

An alternative would be to transition the building gradually to smoke-free status. As smokers move out, prospective new tenants/condominium owners would be advised that

the building is becoming “smoke-free” and that smoking is prohibited both within individual units and in common areas. It is recommended that smoking also be prohibited on balconies and patios of units to prevent the drifting of second-hand smoke into other units. This approach has the advantage of being the least disruptive to current residents but the disadvantage that it could take a long time before the problem of drifting second-hand smoke is resolved.

When smoking continues to be permitted in some units or parts of the complex, owners/landlords may want to protect themselves legally by taking the following steps:

Require smokers to pay increased security deposits. Check your provincial/territorial tenancy act to be sure not to exceed the legal limit.

Insert an additional clause into the rental agreement to make the tenant responsible for any damage caused by smoking.

Consult with a lawyer about having tenants sign an agreement acknowledging that they may be exposed to second-hand smoke in their unit and/or in common areas of the building. The tenant agrees to accept any consequences of that exposure and agrees not to hold the landlord responsible for any resultant bodily injury or property damage. Although such an agreement doesn't guarantee that the owner/landlord won't be sued, it reduces the likelihood that such a claim would be successful.³⁸

A fourth alternative would be to declare the building smoke-free as of a certain date. This approach would necessitate amending the individual tenancy agreements. Most provincial/territorial tenancy laws have detailed rules regarding how this can be done i.e. stipulating how much notice must be given to a tenant, whether the amendment justifies allowing the tenant to terminate the lease, what can be done if a tenant violates this obligation, etc. See Section 4 for a summary of the relevant provisions of all provincial/territorial residential tenancy laws.

What To Do When a Smoking Restriction Is Violated

When a landlord/condominium owner discovers that a tenant has violated a smoking restriction, a number of steps can be taken:

1. A usual first step is to advise the tenant of the breach of the rules and to issue a polite warning regarding future consequences.
2. For a subsequent offence, if the tenant is smoking in a common area where forbidden under a local bylaw, the landlord can call bylaw enforcement or the police. The enforcement officer will likely issue a warning or a fine, which may

prove sufficient to deter the offending tenant from smoking again where prohibited. If smoking is prohibited under the condominium association bylaws or tenancy agreement, the bylaws or lease will likely specify the penalties for a breach of the no-smoking provision.

3. If the problem persists, you may need to inform the provincial/territorial body responsible for resolving disputes between landlords and tenants. See Section 4 for contact information.

How To Make a New Development Smoke-Free

It is highly recommended that new apartment and condominium developments be made smoke-free from the outset. Eighty percent of the adult population in Canada does not smoke, and the proportion of non-smokers is increasing.³⁹ As well, almost half of smokers (48%) do not smoke in their homes.⁴⁰ The advantages of this approach are numerous:

There will be significant cost savings from lower maintenance and insurance costs.

The risks of fire will be substantially decreased.

The risks of tenants suing because of second-hand smoke infiltration will be greatly diminished.

It is much easier to implement a smoking ban from the outset than to change the rules when there are already tenants who smoke living in the building.

Suggested Language to Include in a Lease

The following language can be adapted for inclusion in a lease/tenancy agreement for an apartment or condominium unit in a new building that will be smoke-free:

- a. No owner, family member, tenant, resident, guest, business invitee, or visitor shall smoke cigarettes, cigars, or any other tobacco product, marijuana, or illegal substance anywhere within the boundaries of the project or complex. This prohibition shall include the outside common areas, enclosed common areas, exclusive use common areas, and residential units within the project.
- b. "Smoking" shall include the inhaling, exhaling, burning, or carrying of any lighted cigarette, cigar, other tobacco product,

marijuana, or illegal substance.

c. "Business invitee" shall include but is not limited to any contractor, agent, household worker, or other person hired by the owner, tenant, or resident to provide a service or product to the owner, tenant, or resident.

d. Any owner who sells his/her unit shall specifically disclose to all potential buyers and realtors that smoking is prohibited everywhere within the project, including within the units. Any owner who rents or otherwise allows someone other than the owner to reside within or occupy the unit shall disclose to all prospective residents prior to their residency or occupancy that smoking is prohibited within all common areas and within the residential unit.

e. Each owner is responsible for the actions of all other persons residing within or visiting his/her unit and shall be subject to disciplinary action or a court action for an injunction, or any remedies available for the violation of this section. This section may be enforced in a court of law by any resident or the association. If any resident or the association is required to hire legal counsel to enforce this section, the resident or the association shall be entitled to recover the attorney's fees and any costs incurred, whether or not litigation has been commenced. The association may collect the attorney's fees and any costs incurred by levying a special assessment against the owner of the unit and an assessment lien, if necessary.

f. The Board of Directors shall have the authority and power to enact rules and regulations that it deems necessary to enforce this restriction, including a schedule of fines that may be imposed after notice and a hearing. ⁴¹

Part 4: Relevant Legislation

There are numerous laws affecting the rights and responsibilities of both tenants and landlords of multi-unit dwellings:

- Individual tenancy agreements between the landlord and tenant, which are legally binding documents
- Municipal bylaws
- Provincial/territorial legislation governing residential tenancy, which sets out the legal rights and obligations of landlords and renters of residential property
- Provincial/territorial legislation governing condominiums
- Human rights codes.

More than 170 municipalities across Canada have bylaws restricting smoking in buildings accessible to the public.⁴² Many of these bylaws prohibit smoking in all public or common areas of building, including hallways, foyers, stairways, elevators, and laundry rooms.

Provincial/territorial residential tenancy legislation details the rights and responsibilities of landlords and tenants of residential premises and provides a means of settling disputes. Most residential tenancy acts stipulate that tenants are entitled to “quiet enjoyment” of their property, which includes the right to be free from unreasonable disturbances by other tenants. While these laws usually do not specify second-hand smoke as grounds for breach of quiet enjoyment, there is emerging case law to support a claim that second-hand smoke unreasonably interferes with “quiet enjoyment.”⁴³ In fact, the Canada Mortgage and Housing Corporation (CMHC) includes “cigarette smoke seeping into your unit from other renters” among a list of potential problems for tenants.⁴⁴

Note that for the purpose of this paper, in accordance with provincial/territorial residential tenancy legislation, the discussion of possible legal remedies does not apply to the following types of residences:

- premises occupied for business purposes with living accommodation attached and rented under a single agreement
- rooms in the living quarters of the landlord, if the landlord resides in those quarters
- hotels, motels, motor hotels, resorts, lodges, cottages/cabins in a campground or trailer park, tourist homes, bed and breakfast establishments or farm vacation homes, if a person resides there for less than 6 consecutive months

- college/university residences
- nursing homes
- lodge accommodations
- social care facilities
- correctional institutions.

In addition, depending on the jurisdiction, the legislation may or may not apply to mobile homes and mobile home parks, rooming houses, boarding houses, and co-operative housing.

Provincial/territorial legislation governing condominiums sets out the processes that condominium corporations must follow in establishing and enforcing bylaws and rules governing the conduct of owners and visitors in their private units and common areas. Nothing in these laws prevents condominium corporations from prohibiting smoking in private units and/or common areas, provided the required process is followed and the requisite number of votes is obtained. See the relevant province/territory below for a link to the applicable provincial/territorial law governing condominiums.

The federal *Human Rights Act* and provincial/territorial human rights codes override all other pieces of legislation in that jurisdiction, unless a specific exemption is given. Human rights codes are intended to protect citizens from various forms of discrimination, usually based on race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, gender, age, marital status, family status, disability, or being a recipient of public assistance.

In the *Canadian Human Rights Act* disability is defined as “any previous or existing mental or physical disability and includes disfigurement and previous or existing dependence on alcohol or a drug.”⁴⁵ At least one court in Canada has ruled (*McNeill v. Ontario –Ministry of the Solicitor General & Correctional Services*) that the definition of physical disability does *not* include addiction to the nicotine in cigarettes. In other words, it is not considered discriminatory to ban smoking. On the other hand, it is not clear whether a severe breathing problem or other condition that is worsened by second-hand smoke would classify as a disability, thereby entitling such individuals to protection from exposure to second-hand smoke.

The *Canadian Human Rights Act* protects against discrimination by federally regulated employers, service providers, and unions, whereas provincial/territorial human rights codes cover discrimination in the sectors regulated by the provinces/territories (as determined by the Constitution).⁴⁶ Because housing is primarily a provincial/territorial concern, the relevant provincial/territorial human rights code prevails over issues related

to discrimination experienced in renting or purchasing property. See the relevant province/territory below for a link to the applicable provincial/territorial human rights law and the body responsible for handling complaints. Keep in mind, however, that the likelihood of success using the human rights code as a means of preventing unwanted exposure to drifting second-hand smoke in a multi-unit dwelling is low.

British Columbia

➤ *Residential Tenancy Act*

URL: http://www.qp.gov.bc.ca/statreg/stat/R/02078_01.htm

A landlord may refuse to rent to a tenant who smokes. If the lease specifies that smoking is prohibited and the landlord discovers that the tenant has violated the rental agreement by permitting smoking in the rental unit, the landlord is first required to issue a written warning called a breach letter. The letter indicates that the tenant must comply with the rental agreement or face eviction. The eviction process cannot begin until the landlord has issued the breach letter.⁴⁷

Section 14(2) of the *Residential Tenancy Act* permits an amendment to the tenancy agreement, other than to a standard term, provided both the landlord and tenant agree to the change.

Section 28 states that a tenant is entitled to quiet enjoyment of the property including, but not limited to, the right to “freedom from unreasonable disturbance” as well as the right to the use of common areas “free from significant interference.”

Section 32(1) requires the landlord to maintain the residential property in a state of repair that complies with all health, safety, and housing standards required by law.

Section 45(3) permits a tenant to end a tenancy agreement if a landlord “breaches a material term.”

Section 47(1) authorizes a landlord to end a tenancy if a tenant or the tenant’s guest has “significantly interfered with or unreasonably disturbed another occupant or the landlord” or “seriously jeopardized the health or safety or a lawful right or interest of the landlord or another occupant.”

Section 58 specifies that a dispute between a landlord and tenant regarding rights and obligations may be settled by applying for arbitration.

Complaints

Residential Tenancy Office, Housing Department, Government of British Columbia.

URL: <http://www.rto.gov.bc.ca/?SMSESSION=NO>.

Telephone: Lower Mainland: 604-660-1020; Victoria: Victoria: 387-1602; Elsewhere in BC: 1-800-665-8779.

➤ **Strata Property Act (Condominiums)**

URL: http://www.qp.gov.bc.ca/statreg/stat/S/98043_01.htm.

➤ **British Columbia Human Rights Code**

URL: http://www.bchrt.bc.ca/human_rights_code.pdf.

Complaints

B.C. Human Rights Tribunal. Note that a complaint must be filed with the Tribunal within six months of an incident.

URL: http://www.bchrt.bc.ca/rules_practice_procedure/default.htm.

Telephone: 1-888-440-8844.

➤ **Landlord/Tenant Organizations**

Tenants Rights Action Coalition (TRAC). Coalition of individuals and groups working on behalf of tenants in B.C. Efforts focus on better legal protection for tenants, affordable rental housing, and safe/healthy housing. URL: <http://www.tenants.bc.ca/>.

Rental Owners and Managers Association of British Columbia (ROMA BC). Membership-based organization providing services, education, and representation to rental owners. URL: <http://www.suites-bc.com/about.html>.

B.C. Apartment Owners and Managers Association (BCAOMA). Membership-based organization providing advice, assistance, and education to rental property owners. URL: <http://www.bcapartmentowners.com/contact.html>.

Condominium Homeowners Association of British Columbia. Membership-based organization providing advice, assistance, and education to condominium owners. URL: <http://www.choa.bc.ca>.

Alberta

➤ **Residential Tenancies Act**

URL: <http://www.qp.gov.ab.ca/documents/Acts/R17P1.cfm>.

A landlord may refuse to rent to a tenant who smokes if a no-smoking clause is included in the lease. Although smoking in the rental unit when the lease includes a no-smoking clause is not among the prescribed reasons for a landlord to evict a tenant, smoking prohibitions can be enforceable if they are included in a lease and agreed upon in writing by both parties. If a tenant breaches the rental agreement by allowing smoking in the rental premises, the breaches are dealt with under contract law by the Alberta courts and may lead to an eviction.⁴⁸

Section 16 of the Alberta *Residential Tenancies Act* stipulates that a tenant is entitled to “peaceful enjoyment of the premises” and that “the premises will meet at least the minimum standards prescribed for housing premises under the *Public Health Act* and regulations.”

Section 21 requires a tenant not to interfere in any significant manner with the rights of the landlord or other tenants.

Under Section 26(1), if a tenant violates the tenancy agreement, the landlord may apply to a court for recovery of damages resulting from the violation and/or termination of the tenancy. If a tenant commits a substantial breach, Section 29(1) authorizes the landlord to apply to a court to terminate the tenancy by serving the tenant with at least 14 days’ notice.

Section 28(1) authorizes a tenant to terminate the tenancy by giving the landlord at least 14 days’ notice, provided the landlord has committed a substantial breach of the residential tenancy agreement, and an executive officer has issued an order under section 62 of the *Public Health Act* related to the breach, and the tenant believes that the landlord has failed to comply with the order.

Section 37(1) authorizes a tenant to seek one or more remedies if a landlord violates the tenancy agreement, including recovery of damages resulting from the breach; abatement of rent; and/or termination of the tenancy if the court concludes that the breach is of such significance that the tenancy should be terminated.

Complaints

Consumer Services, Alberta Government Services, Government of Alberta.

URL: <http://www3.gov.ab.ca/gs/information/landlord/>.

Telephone: 1-877-427-4088.

The *Residential Tenancies Act* also permits communities to establish a local Landlord and Tenant Advisory Board to provide information on tenancy issues and mediate disputes; several communities in Alberta have established such boards.

➤ ***Condominium Property Act***

URL: <http://www.canlii.org/ab/laws/sta/c-22/20051114/whole.html>.

➤ ***Smoke-Free Places Act***

URL: http://www.gp.gov.ab.ca/documents/Acts/S09P5.cfm?frm_isbn=0779737172.

The *Smoke-Free Places Act* bans smoking in public places and workplaces where minors are permitted, effective January 1, 2006. Under the Act, smoking is banned in the common areas of apartments and condominiums, including patios, pools, other recreation areas, and enclosed parking garages.

Smoking is banned in the following group living facilities, except by residents in designated smoking rooms that are separately enclosed and ventilated according to the regulations:

- a facility for the long-term care of veterans
- a nursing home under the *Nursing Homes Act*
- a facility as defined under the *Mental Health Act*
- a residential facility for adults only licensed under the *Social Care Facilities Licensing Act*.

Where a business operates from a private home and has employees that do not live in the home, smoking is banned in the part of the residence where the business is operated.

Complaints

For questions about the *Smoke-Free Places Act*, contact “Alberta Connects” at 310-4455.

For questions about the application/enforcement of the *Act* in workplaces, contact the Workplace Health and Safety Office, Alberta Human Resources and Employment, Government of Alberta.

Telephone: 1-866-415-8690.

The public may report infractions to their local municipal government or police.

➤ **Alberta Human Rights Code**

URL: www.albertahumanrights.ab.ca/.

Complaints

Alberta Human Rights and Citizenship Commission.

URL: <http://www.albertahumanrights.ab.ca/ahrcc/>.

Telephone: Confidential Inquiry Line, Northern Regional Office: 780-427-7661;

Confidential Inquiry Line, Southern Regional Office: 403-297-6571.

➤ **Landlord/Tenant Organizations**

Laws for Tenants in Alberta. Website providing detailed explanation of tenants' rights and obligations, landlords' obligations, and options for resolving disputes. URL: <http://www.landlordandtenant.org/home/>.

Canadian Condominium Institute-South Alberta Chapter. Chapter of national organization that serves as information clearinghouse for all participants in the condominium community. URL: <http://www.cci-south.ab.ca/>. North Alberta Chapter. URL: <http://www.cci-north.ab.ca/>.

See the CMHC website at http://www.cmhc-schl.gc.ca/en/bureho/reho/yogureho/fash/fash_001.cfm for links to local organizations throughout Alberta dealing with landlord and tenant issues.

Saskatchewan

➤ ***The Residential Tenancies Act***

URL: <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/R22.pdf>.

A landlord may refuse to rent to a tenant who smokes. If smoking is allowed in the tenancy agreement or if the agreement does not address smoking, then it is permitted in the rental unit. If the lease contains a no-smoking clause and the landlord discovers that the tenant permits smoking in the rental unit, the landlord may evict the tenant. However, the tenant must first be given an opportunity to remedy the breach.⁴⁹

Statutory condition 1 entitles all residents to “quiet enjoyment” of their residence.

Statutory conditions 2(1) and 3(a) require a landlord to maintain common areas of a residence and residential units in “a good, safe and healthy state and in a tenable state of repair” and “fit for habitation, use and enjoyment.”

If a landlord fails to meet the obligations described above, a tenant may apply to the Rentalsman. Section 47 authorizes the Rentalsman to order that the tenancy be terminated; direct any repair to be made; or make any other order the Rentalsman considers appropriate.

Statutory condition 5 requires a landlord to comply with all legal requirements concerning health and safety.

Statutory condition 7(1) requires a tenant not to make or permit “a nuisance or disturbance to other persons in adjacent residential premises.”

Statutory conditions 7(2) and 7(3) set out a landlord’s response to a tenant who is causing a disturbance. The landlord must first request that the tenant discontinue the behaviour. If the tenant fails to stop or repeats the contravention, the landlord may apply to the Rentalsman under section 47 to have the tenant evicted.

Section 27(1) authorizes a landlord to terminate a tenancy agreement immediately after serving a notice of termination if the tenant contravenes the requirement not to create a disturbance/nuisance for other tenants.

Under section 55(1), any person who interferes with a tenant’s right to quiet enjoyment or to a safe and healthy residence, or a landlord who fails to comply with legal requirements concerning health and safety, is guilty of an offence and liable to a maximum fine of \$500 or up to six months in jail or both. As well, the person who was aggrieved as a result of the offence may apply to court for compensation for any costs or loss suffered as a result of the offence.

Complaints

Office of the Rentalsman, Government of Saskatchewan.

URL: <http://www.saskjustice.gov.sk.ca/provmediation/rentalsman/default.shtml>.

Telephone: 1-888-215-2222.

➤ ***The Condominium Property Act, 1993***

URL: <http://www.canlii.org/sk/laws/sta/c-26.1/20051216/whole.html>.

➤ ***The Tobacco Control Act***

URL: <http://www.qp.gov.sk.ca/documents/english/Statutes/Statutes/t14-1.pdf>.

Saskatchewan's *Tobacco Control Act* bans smoking in enclosed public places, effective January 1, 2005. Smoking is not permitted in private homes that operate as day cares during the hours in which child care services are provided. Unlike many other provinces, the smoking ban does not apply to the common areas of apartment buildings or condominiums. Smoking is banned in the following multi-unit facilities, except in designated smoking rooms:

- a special-care home as defined in *The Housing and Special Care Homes Act*
- a personal care home as defined in *The Personal Care Homes Act* that provides accommodation to more than 10 people.

Proprietors who fail to comply with the requirements of the legislation may be fined an amount ranging from a maximum of \$3,000 for a first offence to a maximum of \$50,000 or a fourth or subsequent offence.

Complaints

Tobacco Enquiry Line, Saskatchewan Health, Government of Saskatchewan.

Telephone: 306-787-3084.

➤ ***The Saskatchewan Human Rights Code***

URL: <http://www.qp.gov.sk.ca/documents/English/Statutes/Statutes/S24-1.pdf>.

Complaints

Saskatchewan Human Rights Commission.

URL: <http://www.gov.sk.ca/shrc/default.html>.

Telephone: Saskatoon: 1-800-667-9249; Regina: 1-800-667-8577.

➤ **Landlord/Tenant Organizations**

Saskatchewan Rental Housing Industry Association (SRHIA). Membership-based organization providing information and services to rental property owners. URL: <http://www.srhia.ca/>.

Canadian Condominium Institute–South Saskatchewan Chapter. Chapter of national organization that serves as information clearinghouse for all participants in the condominium community. URL: <http://www.cci.ca/ssc/>. North Saskatchewan Chapter (no website).

M a n i t o b a

➤ ***The Residential Tenancies Act***

URL: <http://web2.gov.mb.ca/laws/statutes/ccsm/r119e.php>.

Landlords have the right to restrict smoking in common areas, such as hallways, elevators, laundry rooms, and recreation facilities. If a tenant smokes in those areas, the landlord could give a warning and then issue a notice for breach of a reasonable rule. Similarly, if a landlord has a rule prohibiting smoking in the rental units and a tenant breaches that rule, the landlord could give a warning and then a notice of termination. However, the tenant could challenge the landlord's notice and ask the provincial authority to determine if the rule is reasonable.⁵⁰

Section 11(2) authorizes a landlord to establish and enforce rules in addition to those set out in the tenancy agreement, including prohibiting smoking in common areas and/or in the rental units, provided “the rule is in writing, is made known to the tenant, and is reasonable in all the circumstances.”

According to Section 11(3), for a rule to be reasonable it must be intended to “(i) promote a fair distribution of services and facilities ... (ii) promote the safety, comfort or welfare of residents ... or (iii) protect the landlord's property from abuse.”

Section 59(1) requires the landlord to maintain the rental unit and residential complex “in a good state of repair, fit for habitation and in a state that complies with health, building and maintenance and occupancy standards required by law.”

Sections 62 and 73 require the landlord and tenant, respectively, not to unreasonably disturb the enjoyment of other residents.

Section 67 requires a landlord to make a prompt enquiry and a reasonable effort to remedy the situation when informed that a tenant's right to quiet enjoyment has been disturbed.

Section 74 requires a tenant and his guests not to “impair the safety or other lawful right or interest” of the landlord or other tenants whether by act or omission.

Under Section 89(1) a tenant has the right to terminate a tenancy if a landlord fails to meet his obligation to ensure quiet enjoyment.

Under Section 96(1) a landlord may give a tenant a notice of termination if the tenant has disturbed the enjoyment of others or if the tenant has failed to comply with an additional rule and the tenant fails to remedy the contravention within a reasonable time after receiving written notice from the landlord.

Under Section 195(3) a person who is guilty of an offence is liable on summary conviction to a fine of not more than \$2,000 for an individual and not more than \$10,000 for a corporation.

Complaints

Residential Tenancies Branch, Consumer and Corporate Affairs Division, Manitoba Finance, Government of Manitoba.

URL: <http://www.gov.mb.ca/finance/cca/rtb/detailde.html>.

Telephone: Winnipeg: 1-800-782-8403; Brandon: 1-800-656-8481; Thompson: 1-800-229-0639.

➤ ***The Condominium Act***

URL: <http://web2.gov.mb.ca/laws/statutes/ccsm/c170e.php>.

➤ ***Non-Smokers Health Protection Act***

URL: <http://web2.gov.mb.ca/laws/statutes/ccsm/n092e.php>.

The *Non-Smokers Health Protection Act* bans smoking in all enclosed public places and workplaces, effective October 1, 2004. Smoking is not permitted in the common areas of residential buildings.

Smoking is also banned in the following “group living facilities,” except by residents only in designated smoking rooms that are separately enclosed and separately ventilated (smoking rooms are not permitted in facilities exclusively for children):

- personal care homes
- hospital addictions units
- hospital palliative care units
- hospices
- residential care facilities
- residential addictions treatment facilities
- residential shelters
- children's group homes
- children's treatment facilities.

Proprietors of these facilities are required to “take reasonable steps to minimize the drifting of smoke into non-smoking areas of the premises.” Proprietors who fail to comply with the law may be fined an amount ranging from \$500-\$3,000 for a first offence to

\$1,000–\$15,000 for a third or subsequent offence.

Complaints

Environmental Health Unit, Public Health Branch, Manitoba Health, Government of Manitoba.

URL: <http://www.gov.mb.ca/health/publichealth/environmentalhealth/>.

Telephone: 204-788-6735.

➤ ***The Human Rights Code***

URL: <http://www.gov.mb.ca/hrc/english/publications/hr-code.html>.

Complaints

Manitoba Human Rights Commission.

URL: <http://www.gov.mb.ca/hrc/english/index.html>.

Telephone: Winnipeg: 1-888-884-8681; Brandon: 1-800-201-2551; The Pas: 1-800-676-7084.

➤ ***Landlord/Tenant Organizations***

Professional Property Managers Association Manitoba. Represents property owners and managers of government-owned and privately-owned rental housing. URL: <http://ppmamanitoba.com/index.html>.

Canadian Condominium Institute–Manitoba Chapter. Chapter of national organization that serves as information clearinghouse for all participants in the condominium community. URL: <http://www.cci.ca/Manitoba/>.

Ontario

➤ **Tenant Protection Act, 1997**

URL: http://192.75.156.68/DBLaws/Statutes/English/97t24_e.htm.

A landlord has the right to include a no-smoking clause in the lease. Although the *Tenant Protection Act* does not specifically address smoking, a landlord may have grounds to seek eviction of a tenant if the smoke damages the property or bothers other tenants.⁵¹

Section 24(1) requires a landlord to maintain the residential complex, including the rental units, “in a good state of repair and fit for habitation” and to comply with health, safety, housing, and maintenance standards.

Section 26 prohibits a landlord from “substantially” interfering with the “reasonable enjoyment of the rental unit” and the rental property.

Section 34(1) provides remedies to a tenant if the Tribunal determines that a landlord has breached the obligations under 24(1). Possible remedies include termination of the tenancy, abatement of the rent, repairs made at no cost to the tenant, or payment of a specified sum to the tenant as compensation.

Section 64(1) authorizes a landlord to issue a notice of termination if a tenant or a tenant’s guest “substantially interferes with the reasonable enjoyment of the residential complex” or “substantially interferes with another lawful right, privilege or interest of the landlord or another tenant.” If the tenant complies within seven days, the notice of termination is rescinded.

Section 206(3) stipulates that a landlord who knowingly interferes with a tenant’s right to reasonable enjoyment of the premises is guilty of an offence and is liable upon conviction to a fine of not more than \$10,000 (Section 206(6)).

Complaints

Ontario Rental Housing Tribunal.

URL: [http://www.orht.gov.on.ca/scripts/index .asp](http://www.orht.gov.on.ca/scripts/index.asp).

Telephone: 416-645-8080.

➤ **Condominium Act, 1988**

URL: http://192.75.156.68/DBLaws/Statutes/English/98c19_e.htm.

➤ **Smoke-Free Ontario Act**

URL: http://www.ontla.on.ca/documents/Bills/38_Parliament/Session1/b164ra.pdf.

The *Smoke-Free Ontario Act* bans smoking in all workplaces and public places, effective May 31, 2006. The legislation prohibits smoking in a limited number of multi-unit dwellings, since some workplaces are also residences:

- Common areas of condominiums, apartment buildings, and university/college residences, including elevators, hallways, parking garages, party rooms, laundry facilities, lobbies, exercise rooms (section 9(2)3).
- Private homes that provide day care, as defined by the *Day Nurseries Act*, whether or not children are present (section 9(2)5).

Proprietors of these places are required to give notice of the smoking ban, to post any required signs, and to ensure compliance.

Certain types of residence that are also workplaces are permitted to have smoking rooms for the use of the residents only, provided the smoking rooms are separately enclosed and meets prescribed ventilation requirements, and the residents are able to smoke safely without assistance from an employee. The following facilities are permitted to have designated smoking rooms:

- a nursing home as defined in the *Nursing Homes Act*
- an approved charitable home for the aged under the *Charitable Institutions Act*
- a home as defined in the *Homes for the Aged and Rest Homes Act*
- a retirement home that also provides care to the residents
- a supportive housing residence funded or administered through the Ministry of Health and Long-Term Care or the Ministry of Community and Social Services
- a psychiatric facility listed in the regulations
- a facility for veterans.

Proprietors who fail to ensure that the smoking ban is respected could be fined up to \$1000 for a first offence and up to \$5,000 for a second and subsequent offence.

Complaints

Process to be determined by the regulations.

➤ **Human Rights Code**

URL: <http://www.ohrc.on.ca/english/code/index.shtml>.

Complaints

Ontario Human Rights Commission.

URL: <http://www.ohrc.on.ca/>.

Telephone: 1-800 387-9080.

➤ **Landlord/Tenant Organizations**

Federation of Rental-housing Providers of Ontario. Ontario's only province-wide association for apartment owners and managers. URL:

<http://www.frpo.org/aboutus.asp>.

Landlord's Self-Help Centre. URL: <http://www.landlordselfhelp.com/lshc.htm>.

For a list of community-based tenants' and landlords' associations throughout Ontario, see the CMHL website at: http://www.cmhc-schl.gc.ca/en/bureho/reho/yogureho/fash/fash_009.cfm.

Canadian Condominium Institute. National organization with provincial and local chapters that serves as information clearinghouse for all participants in the condominium community. For a list of CCI chapters throughout Ontario, see the CCI website at: <http://www.cci.ca/Board/Chapters.html>.

Association of Condominium Managers of Ontario. URL:

<http://www.acmo.org/whatisacmo.php>.

Québec

A landlord may refuse to rent to a tenant who smokes if smoking is prohibited in the lease or in the bylaws of the building. If a no-smoking clause is written into a lease or a bylaw and the landlord discovers that the tenant smokes in the rental unit, the landlord has grounds to evict the tenant, but only if the landlord can prove that this action by the tenant has resulted in a serious injury. The landlord may also apply to have the tenant cease the offensive activity; i.e. for a court order to instruct the tenant to stop smoking in the rental unit.⁵²

➤ **Québec Civil Code, Title Two: Nominate Contracts, Chapter IV: Lease (Residential Tenancy)**

URL: http://www.rdl.gouv.qc.ca/fr/pdf/Ccq_du_louage_22_09_2005.pdf.

Section 1854 requires a landlord to ensure that the property is in a good state of repair and to provide a tenant “with peaceable enjoyment of the property throughout the term of the lease.”

Section 1858 requires a landlord to warrant against “legal disturbances of enjoyment of the leased property” and requires a tenant to notify the landlord of a disturbance before pursuing a remedy.

Section 1860 requires tenants not to “disturb the normal enjoyment of the other tenants.” A landlord may seek termination of the lease if a tenant violates the right of other tenants to “normal enjoyment.”

Section 1861 provides various remedies to a tenant who is disturbed by another tenant, provided the landlord was notified and the disturbance persisted. Possible remedies include a reduction of rent, the termination of the lease, or recovery of damages from the landlord unless the landlord can prove he acted with diligence.

Section 1910 requires a landlord to maintain a dwelling “in good habitable condition.”

Under 1912, if a landlord fails to comply with legal requirements related to maintenance, habitability, safety, and sanitation, or if a landlord or tenant fails to comply with a legal obligation related to the “safety and sanitation” of a unit, the remedies available include seeking damages, performance of the obligation, or termination of the lease.

Section 1913 prohibits a landlord from renting a dwelling that is unfit for habitation. A dwelling is considered unfit for habitation “if it is in such a condition as to be a serious danger to the health or safety of its occupants or the public, or if it has been declared so by the court or by a competent authority.”

Complaints

Régie du logement.

URL: http://www.rdl.gouv.qc.ca/en/1_0/index.asp.

Telephone: 1-800-683-2245.

➤ **Québec Civil Code, Book One: Articles 299 to 364, Book Four: Articles 1010, 1038 to 1109, 1299 to 1370 (Condominiums)**

URL: <http://www.canlii.org/qc/laws/sta/ccq/20051216/whole.html>.

➤ **Tobacco Act (Loi sur le tabac)**

URL:

<http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=5&file=2005C29A.PDF>.

The Tobacco Act bans smoking in workplaces and public places, effective May 31, 2006.

The law also prohibits smoking in a limited number of residential dwellings:

- in the common areas of multi-unit dwellings that contain at least six units
- in the common areas of residences for the elderly
- in private homes that operate a family daycare during the hours in which children are being cared for
- in indoor common areas of correctional facilities.

Smoking is prohibited in the following residential facilities, except by the residents in separately enclosed and separately ventilated smoking rooms (DSRs) and/or in designated rooms, which cannot represent more than 40% of all the rooms. Such settings include:

- psychiatric hospital centers, as well as short- and long-term care facilities
- correctional, rehabilitation, and reintegration centres.

In terms of SHS in residential settings, Quebec's *Tobacco Act* falls below national-level standards by not prohibiting smoking completely, or by not restricting smoking to DSRs in medical, correctional, and short- and long-term care facilities.

A proprietor who fails to comply with the smoking ban may be fined an amount ranging from \$400-\$4,000 for a first offence and \$1,000-\$10,000 for a subsequent offence.

Complaints

Process to be determined.

➤ ***The Québec Charter of Human Rights and Freedoms***

URL: <http://www.cdpdj.qc.ca/en/commun/docs/charter.pdf>.

Complaints

Commission des droits de la personne et des droits de la jeunesse.

URL: <http://www.cdpdj.qc.ca/en/home.asp?noeud1=0&noeud2=0&cle=0>.

Telephone: 1-800 361-6477.

➤ ***Landlord/Tenant Organizations***

For a list of local tenants' rights associations in Quebec, see the CMHC website at:

http://www.cmhc-schl.gc.ca/en/bureho/reho/yogureho/fash/fash_011.cfm.

Le Regroupement des comités logements et associations de locataires du Québec (RCLALQ). Umbrella organization of tenants' associations promoting the rights of tenants. URL: <http://www.rclalq.qc.ca>. (Also provides links to local tenants' associations.) Information in French only.

La Corporation des propriétaires immobiliers du Québec (CORPIQ). Non-profit organization providing services, education, and representation to rental property owners in Quebec. URL: <http://www.corpiq.com/index.asp>. Information in French only.

Association des Syndicats de Copropriété du Québec (ASCQ). Membership-based organization provides information and education to condominium owners. URL: <http://www.ascq.qc.ca/>. Bilingual website.

New Brunswick

➤ ***The Residential Tenancies Act***

URL: <http://www.gnb.ca/acts/acts/r-10-2.htm>.

A landlord and a tenant may agree to any addition to a lease that does not alter any right or duty in the *Residential Tenancies Act* or the Standard Form of Lease. If smoking is expressly permitted or not addressed in the tenancy agreement, then it is permitted in the rental unit. If a no-smoking clause is written into the Standard Form of Lease and the landlord discovers that the tenant permits smoking in the rental unit, the breach would be dealt with on a case-by-case basis by the Rentalsman and could result in an eviction. Alternatively, if the tenant remains, the landlord may make a damage claim at the end of the tenancy to recover the cost of cleaning and repainting the premises.⁵³

Section 3(1) requires a landlord to maintain the premises “in a good state of repair and fit for habitation” and to comply with “all health, safety, housing, and building standards and any other legal requirement respecting the premises.”

Section 4(1) requires a tenant and guests of a tenant to “conduct themselves in a manner that will not cause a disturbance or nuisance.”

If a tenant fails to comply with his obligations, Section 5(1) authorizes the landlord to serve on the tenant a notice stating the complaint. If the tenant fails to comply within the time prescribed, the landlord is authorized under 5(2) to send a notice to the rentalsman.

Section 5(4) authorizes the rentalsman to terminate the tenancy if a tenant fails to comply with his obligations to the satisfaction of the rentalsman.

Section 6(1) empowers a tenant to serve a notice of complaint on a landlord if the landlord fails to comply with his obligations under the Act or the terms of the tenancy agreement.

Section 6(2) empowers a tenant to advise the rentalsman that the landlord has failed to comply with his obligations in the time prescribed. Under Section 6(4), if the landlord fails to comply with his obligations to the satisfaction of the rentalsman, the rentalsman may perform the obligations of the landlord.

Section 9(3) authorizes a landlord and tenant to agree to any addition to the Standard Form of Lease as long as it does not alter any right or duty provided in the *Residential Tenancies Act* or the Standard Form of Lease.

Complaints

Office of the Rentalsman, Rentalsman and Consumer Affairs, Justice Services, Justice and Attorney General, Government of New Brunswick.

URL: <http://www.gnb.ca/0062/rentalsman/index%2De.asp>.

Telephone: Contact one of six regional offices listed on website.

➤ **Land Titles Act (Condominiums)**

URL: <http://www.canlii.org/nb/laws/sta/l-1.1/20051114/whole.html>.

➤ **Smoke-free Places Act**

URL: <http://www.gnb.ca/0062/acts/acts/s-09-5.htm>.

New Brunswick's *Smoke-free Places Act* bans smoking in indoor workplaces and enclosed public places effective October 1, 2004. Smoking is also banned in a limited number of residences:

- the common areas of multi-unit residential buildings
- in that part of private home in which a business operates, provided the business has employees who do not live in the home.

Smoking is prohibited in the following “group living facilities,” except by residents in a designated smoking room that complies with the regulations:

- a facility for the long-term care of veterans
- a nursing home as defined in the *Nursing Homes Act*
- a psychiatric facility as defined in the *Mental Health Act*
- a residential facility in which approved care services are provided for adults
- an approved transition house.

Proprietors and employers are required to ensure compliance with the law; fines for failing to do so range from \$240 to \$2,620. Employers are also required to take “reasonable precautions” to minimize the exposure of employees to tobacco smoke; however, there does not appear to be any penalty for failing to do so.

Complaints

Smoke Free Act Information Line, Government of New Brunswick.

URL: <http://www.gnb.ca>, keyword : health.

Telephone: 1-866-234-4234.

➤ ***Human Rights Act***

URL: <http://www.gnb.ca/acts/acts/h-11.htm>.

Complaints

New Brunswick Human Rights Commission.

URL: <http://www.gnb.ca/hrc-cdp/e/index.htm>.

Telephone: 1-888-471-2233.

➤ ***Landlord/Tenant Organizations***

Public Legal Education and Information Service of New Brunswick (PLEIS-NB). Main function is to provide easily understood information on legal topics, including housing.

URL: <http://www.legal-info-legale.nb.ca/showpub.asp?id=55&langid=1>.

Nova Scotia

➤ ***Residential Tenancies Act***

URL: <http://www.gov.ns.ca/legislature/legc/statutes/resident.htm>.

The *Residential Tenancies Act* permits a landlord to establish reasonable rules that promote the safety, comfort, and welfare of tenants and protect the landlord's property. The rules must apply to all tenants and tenants must be given a copy of the rules before signing a lease. A landlord can make changes to the rules provided tenants are given four months' notice prior to the anniversary date of their lease. Thus a landlord can restrict smoking in residential units, provided the above requirements are met. If a no-smoking clause is written into a lease and the landlord discovers that the tenant permits smoking in the rental unit, the landlord has the right to terminate the tenancy.⁵⁴

Section 8(1) permits additional obligations and benefits to be written into the lease, provided they do not conflict with the *Residential Tenancies Act*.

Section 9(1), Statutory Condition 1 requires the landlord "to keep the premises in a good state of repair and fit for habitation" and to comply with any law respecting standards of health, safety, or housing.

Section 9(1), Statutory Condition 3, obliges both a landlord and tenant to conduct themselves so as not to interfere with other tenants.

Section 9A authorizes a landlord to establish "reasonable" rules. A rule is reasonable if it promotes a fair distribution of services and facilities to the occupants of the premises or it promotes the safety, comfort, or welfare of persons working or living in the premises. Section 9A(3)(a)(ii) authorizes the landlord to change the rules of occupancy with four months' notice.

Section 10C allows a tenant to terminate a lease early for health reasons, where a tenant or tenant's family member has suffered a significant deterioration in health that results in the tenant's inability to continue the lease or where the residential premises are rendered inaccessible to the tenant. The tenant may terminate the tenancy by providing one month's notice and the certificate of a qualified medical practitioner.

Complaints

Director of Residential Tenancies, Service Nova Scotia and Municipal Relations,
Government of Nova Scotia.

URL: <http://www.gov.ns.ca/coms/housing/>.

Telephone: 1-800-670-4357.

➤ **Condominium Act**

URL: <http://www.canlii.org/ns/laws/sta/r1989c.85/20051216/whole.html>.

➤ **Smoke-Free Places Act, amended⁵⁵**

URL: http://www.gov.ns.ca/legislature/legc/bills/59th_1st/1st_read/b225.htm.

The *Smoke-Free Places Act* bans smoking in enclosed public places and workplaces, effective December 1, 2006. The law also bans smoking in a limited number of residences:

- the common areas of multi-unit residential buildings, including corridors, lobbies, stairwells, elevators, escalators, eating areas, and washrooms
- provincial jails, prisons, detention centres, lock-ups, reformatories, etc.

Smoking is also prohibited in the following establishments, except by residents who are 19 years or older in designated smoking rooms that are separately ventilated and enclosed:

- health-care facilities for the acute or long-term care of veterans
- licensed nursing homes
- licensed residential care facilities
- homes for aged
- homes for disabled persons.

Managers and employers are required to ensure compliance with the *Act*. Penalties for failing to do so range from a maximum fine of \$2,000 for a first offence to a maximum fine of \$10,000 for a third or subsequent offence.

Complaints

Process to be determined.

➤ **Human Rights Act**

URL: <http://www.gov.ns.ca/legislature/legc/statutes/humanrt.htm>.

Complaints

Nova Scotia Human Rights Commission.

URL: <http://www.gov.ns.ca/humanrights/default.htm>.

Telephone: 1-877-269-7699.

➤ ***Landlord/Tenant Organizations***

The Investment Property Owners Association of Nova Scotia (IPOANS). Represents the interests of owners of residential rental properties. URL:

<http://www.ipoans.ns.ca/index2.asp>.

Canadian Condominium Institute–Nova Scotia Chapter. Chapter of national organization that serves as information clearinghouse for all participants in the condominium community. URL: <http://www.cciatlantic.ca/>.

Prince Edward Island

➤ *Rental of Residential Property Act*

URL: http://www.gov.pe.ca/law/statutes/pdf/r-13_1.pdf.

A landlord may refuse to rent to a tenant who smokes. If a no-smoking clause is written into a lease and the landlord discovers that the tenant permits smoking in the rental unit, this breach of the rental agreement is grounds for the landlord to evict the tenant.⁵⁶

Section 6, Statutory Condition.1 requires a landlord to keep the premises “in a good state of repair and fit for habitation” and to comply with any standards of health, safety, or housing.

Section 6, Statutory Condition 3 requires a tenant and a tenant’s guests “not to interfere with the possession, occupancy or quiet enjoyment of other lessees.”

Section 6, Statutory Condition 9 entitles a tenant to “quiet enjoyment” of the residential premises.

If a landlord or tenant fails to comply with a legal requirement or condition of a rental agreement, Section 8 authorizes either party to make a written application to the Director to investigate the matter and issue a remedy. The Director may authorize the termination of the rental agreement or may make another order to remedy the violation.

Section 9(4) permits a landlord and tenant to include other benefits and obligations in the rental agreement, provided they do not conflict with the *Rental of Residential Property Act* or the standard agreement.

Section 14(1) authorizes a landlord to serve a notice of termination upon a tenant if the tenant breaches a condition of the rental agreement or if the safety or other lawful right of the landlord or other tenants has been seriously impaired by the tenant.

Complaints

Office of the Director of Residential Rental Property, Government of Prince Edward Island.

URL: <http://www.ircac.pe.ca/rental/>.

Telephone: 1-800-501-6268.

➤ *Condominium Act*

URL: <http://www.gov.pe.ca/law/regulations/pdf/C&16G.pdf>.

➤ **Smoke-free Places Act**

URL: http://www.gov.pe.ca/law/statutes/pdf/s-04_2.pdf?PHPSESSID=a37482661d3e6fdf84d32273b8de713e.

The *Smoke-Free Places Act* bans smoking in public places and workplaces, effective June 1, 2003. The Act does not apply to common areas of multi-unit residences. Smoking in long-term care facilities, including licensed nursing homes and community care facilities, is restricted to designated smoking rooms that meet the requirements of the regulations. The owner/employer is responsible for ensuring that smoking only takes place in the designated room and that appropriate signs are posted. Penalties for failing to do so include a fine ranging from \$500 to \$2,000.

As of September 29, 2004, the smoking ban was extended to adult correctional facilities both inside the buildings and on the grounds.⁵⁷

Complaints

Director of Regulatory Services, Department of Health and Social Services, Government of Prince Edward Island.

Telephone: 1-800-958-6400.

➤ **Human Rights Act**

URL: <http://www.gov.pe.ca/law/statutes/pdf/h-12.pdf>.

Complaints

PEI Human Rights Commission.

URL: <http://www.gov.pe.ca/humanrights/>.

Telephone: 1-800-237-5031.

➤ **Landlord/Tenant Organizations**

None found.

Newfoundland and Labrador

➤ *Residential Tenancies Act, 2000*

URL: <http://www.gov.nf.ca/hoa/statutes/r14-1.htm>.

A landlord may refuse to rent to a tenant who smokes if a no-smoking clause is written into a lease. If such a clause is written in the lease and a landlord discovers that a tenant allows smoking in the rental unit, the landlord may evict the tenant.⁵⁸

Under Statutory Condition 1(a) a landlord is required to maintain the premises “in a good state of repair and fit for habitation” and to comply with laws respecting health, safety, and housing.

Statutory Conditions 7(a) and 7(b) require a tenant and landlord, respectively, not to “unreasonably interfere” with the rights of the landlord or other tenants to “peaceful enjoyment” of the premises and common areas.

Section 19(1) authorizes a tenant to terminate a rental agreement if a landlord commits a material breach of the rental agreement and fails to remedy the breach within a reasonable time after notice has been served.

Section 19(2) authorizes a landlord to terminate a rental agreement if a tenant commits a material breach of the rental agreement and fails to remedy the breach within a reasonable time after notice has been served. Section 19(5) defines “material breach of a rental agreement” as any activity that affects the integrity or value of a tenant’s residential premises.”

Section 20(1) authorizes a tenant to terminate the rental agreement if the landlord fails to maintain the premises in a state fit for habitation.

Section 20(2) authorizes a landlord to terminate the rental agreement if an action of, or a failure to act by, a tenant makes a premises unfit for habitation.

Section 22(1) authorizes a tenant to terminate the rental agreement if the landlord fails to ensure “peaceful enjoyment” of the residence.

Section 23(1) authorizes a landlord to terminate the rental agreement if a tenant interferes with the landlord’s or another tenant’s right to “peaceful enjoyment” of the property.

Section 35(1) permits a landlord or tenant to apply to the director to determine whether a provision of a rental agreement or the *Residential Tenancies Act* has been breached.

Section 38(1) authorizes the director to investigate an application submitted under

Section 35 and attempt to mediate a settlement, conduct a hearing, or issue an order.

Complaints

Director of Residential Tenancies, Residential Tenancies Section, Consumer and Commercial Affairs, Department of Government Services, Government of Newfoundland.

URL: <http://www.gs.gov.nl.ca/cca/rt/about.stm>.

Telephone: St. John's: 1-877-829-2608; Gander: 1-877-829-2608; Corner Brook: 1-877-829-2608. Or check the website above for additional contact information.

➤ **Condominium Act**

URL: <http://www.canlii.org/nl/laws/sta/c-29/20051121/whole.html>.

➤ **Smoke-free Environment Act, 2005**

URL: <http://www.hoa.gov.nl.ca/hoa/statutes/s16-2.htm>.

The *Smoke-free Environment Act* bans smoking in all workplaces and public places, effective July 1, 2005. The legislation prohibits smoking in a limited number of multi-unit dwellings, since some workplaces are also residences:

- a common area of a multi-unit residential building, including a corridor, lobby, stairwell, elevator, escalator, eating area, washroom
- a provincial jail, prison, detention centre or reformatory.

Smoking by residents is permitted in the following facilities, but only in designated smoking rooms, and only under prescribed conditions:

- a facility that provides long term care, including a long term care facility located within an acute care facility
- a psychiatric facility or unit.

Employers, owners, and operators who fail to post the required signage and to ensure compliance with the law may be fined \$500-\$5000.

Complaints

Department of Government Services, Government of Newfoundland.

Telephone: 1-888-733-2511.

Enforcement handled by environmental health officers with the Department of Government. Services in conjunction with liquor establishment inspectors.

➤ ***Human Rights Code***

URL: <http://www.hoa.gov.nl.ca/hoa/statutes/h14.htm>.

Complaints

Human Rights Commission, Newfoundland and Labrador.

URL: <http://www.justice.gov.nl.ca/hrc/>.

Telephone: 1-800-563-5808.

➤ ***Landlord/Tenant Organizations***

None found.

Yukon

➤ ***Landlord and Tenant Act (Part 4 Residential Tenancies)***

URL: <http://www.gov.yk.ca/legislation/acts/late.pdf>.

The *Landlord and Tenant Act* does not specifically address smoking. However, if a no-smoking clause is part of the tenancy agreement and all tenants in the building are treated equally, a tenant who breaks the rule by permitting smoking would be committing a substantial breach of the lease and an eviction notice would be justified.⁵⁹

Section 76(1) requires a landlord to maintain the premises “in a good, safe, healthy, and tenantable state of repair” and to comply with “health, safety, maintenance, and occupancy standards established by law.”

Section 76(2) requires a tenant not to interfere “in any significant manner” with the rights of either the landlord or other tenants and not to endanger persons or property in the premises.

Section 76(3) authorizes a landlord or tenant to apply to a judge for remedy resulting from breach of the obligations imposed by Section 76. The judge may terminate the tenancy agreement or authorize repairs.

Section 77(1) requires that all rules respecting the tenancy agreement be disclosed in writing prior to the signing of the agreement.

Section 77(2) authorizes a landlord to make or amend rules *after* a tenancy agreement has been signed, provided the rule is reasonable and intended to “promote the convenience, safety or welfare of the tenants” or “make a fair distribution of services and facilities for the general use of the tenants.”

Section 77(3) specifies that rules made or amended under 77(2) are enforceable only if they do not substantially modify the tenancy agreement; they apply to tenants in a fair manner; they are clear; and reasonable notice in writing of the rules is given to the tenant.

Section 79(3) authorizes a landlord or tenant to file a complaint with a rentals officer.

A rentals officer has the authority to mediate or arbitrate any dispute (Section 80(1)) and to make any orders regarding the obligations of a landlord or tenant (Section 81(3)).

If a tenant commits a substantial breach of the tenancy agreement, Section 93(1) authorizes a landlord to apply to a judge for an order terminating the tenancy or to terminate the tenancy by giving 14 days’ written notice. “Substantial breach” includes

a breach of a tenant's responsibility not to interfere with the rights of other tenants or the landlord, or a series of breaches of the residential tenancy agreement, the cumulative effect of which is substantial.

Complaints

Consumer Services, Department of Community Services, Government of Yukon.

URL: <http://www.community.gov.yk.ca/consumer/landtact.html>.

Telephone: 1-800-661-0408, extension 5111.

➤ ***Condominium Act***

URL: <http://www.canlii.org/yk/laws/sta/36/20041124/whole.html>.

➤ ***Human Rights Act***

URL: <http://www.gov.yk.ca/legislation/acts/huri.pdf>.

Complaints

Yukon Human Rights Commission.

URL: <http://www.yhrc.yk.ca/>.

Telephone: 1-800-661-0535.

➤ ***Landlord/Tenant Organizations***

None found.

Northwest Territories

➤ *Residential Tenancies Act*

URL: http://www.justice.gov.nt.ca/PDF/ACTS/Residential_Tenancies.pdf.

If smoking is allowed in the tenancy agreement or the agreement does not address smoking, then it is permitted in the rental unit. If a no-smoking clause is written into the lease and a landlord discovers that a tenant permits smoking in the rental unit, the landlord may evict the tenant based on a fire insurance and safety clause.⁶⁰

Section 12(1) authorizes a landlord and tenant to require other rights and obligations in addition to those in the tenancy agreement, provided they are not inconsistent with the *Residential Tenancies Act*. Sections 12(2) and (3) require the obligation to be “reasonable in all circumstances” and to be given in writing to the tenant.

Under Section 12(4), a landlord or tenant may apply to a rental officer for a determination of whether an obligation or rule is reasonable. If the rental officer determines that the rule is reasonable, the landlord or tenant may be ordered to comply under section 12(5).

Section 30(1) requires a landlord to maintain the premises “in a good state of repair and fit for habitation” and to ensure that the premises comply “with all health, safety and maintenance and occupancy standards required by law.”

If, on the application of a tenant, a rental officer determines that the landlord has breached an obligation imposed by Section 30, Section 30(4) authorizes the rental officer to make an order requiring the landlord to comply; authorizing any repair or other action by the tenant to remedy the effects of the breach; requiring the landlord to compensate the tenant for loss incurred as a direct result of the breach; or terminating the tenancy.

Sections 30(5) and 30(6), respectively, require a tenant to notify a landlord of a breach and require the landlord to remedy the situation within ten days.

Section 34(1) prohibits a landlord from disturbing “a tenant’s possession or enjoyment” of the rental premises or residential complex.

Under Sections 34(2) and 39(2), respectively, if a rental officer determines that a landlord has violated a tenant’s right to enjoyment of the rental unit or has breached an additional obligation, the officer may require the landlord to comply with the obligation; require the landlord to compensate the tenant for loss suffered as a direct result of the breach; or terminate the tenancy.

Section 43(1) requires a tenant not to disturb the landlord’s or other tenants’

“possession or enjoyment of the rental premises or residential complex.”

Under Section 43(3), if a rental officer determines that a tenant has breached the obligation not to disturb the enjoyment of other tenants or the landlord, the officer may require the tenant to comply with the obligation; require the tenant to compensate the persons affected for loss suffered as a direct result of the breach; or terminate the tenancy.

Section 45(1) requires a tenant to comply with any additional obligations set out in writing, provided they are “reasonable in all circumstances.” Under 45(4), if a rental officer determines that a tenant has breached an obligation, the rental officer may require the tenant to comply; require the tenant to compensate the landlord for loss suffered as a direct result of the breach; authorize the landlord to take action to remedy the effects of the breach; or terminate the tenancy.

Section 68(1) requires that an application by a landlord or tenant to a rental officer be made within 6 months after the breach of an obligation.

Section 87(1) authorizes a landlord or tenant affected by an order of a rental officer to appeal the order to a judge of the Supreme Court within 14 days of being served the order.

Complaints

Rental Office, Department of Justice, Government of Northwest Territories.

URL: <http://www.justice.gov.nt.ca/RentalOffice/rentalofficer.htm>.

Telephone: 1-800-661-0760.

➤ ***Condominium Act***

URL: <http://www.canlii.org/nt/laws/sta/c-15/20051121/whole.html>.

➤ ***Human Rights Act***

URL: http://www.assembly.gov.nt.ca/Human_Rights.pdf.

Complaints

Northwest Territories Human Rights Commission.

URL: <http://www.nwthumanrights.ca/>.

Telephone: 1-888-669-5575.

➤ ***Landlord/Tenant Organizations***

None found.

Nunavut

➤ *Residential Tenancies Act*

URL: http://www.nunavutcourtofjustice.ca/library/consol-stat/CSNu_1999_170_Residential_Tenancies.pdf.

If smoking is allowed in the tenancy agreement or the agreement does not address smoking, then it is permitted in the rental unit. In Public Housing units, landlords may not refuse to rent a unit to a tenant who smokes. For private rentals, a landlord may refuse to rent to a tenant who smokes. If a no-smoking clause is written into the lease and a landlord discovers that a tenant permits smoking in the rental unit, the landlord may evict the tenant. The Rental Officer reviewing the termination of the tenancy would consider whether evicting the tenant is reasonable. If the smoking were potentially interfering with other tenants' "quiet enjoyment" of their units, the tenant could be evicted.⁶¹

Section 12(1) authorizes a landlord and tenant to include other rights and obligations in the written tenancy agreement, such as prohibiting smoking, provided the obligations are not inconsistent with the *Residential Tenancies Act* and provided they are "reasonable in all circumstances" (Section 12(2)).

Section 12(3) requires that any rules established by a landlord be "reasonable in all circumstances, in writing and made known to the tenant."

Sections 12(4) and 12(5), respectively, authorize a landlord or tenant to apply to a rental officer to determine whether an obligation or rule is reasonable and authorize the rental officer to order compliance with a reasonable rule.

Section 30(1) requires a landlord to maintain the rental premises and the residential complex "in a good state of repair and fit for habitation" and to ensure that they comply with "all health, safety and maintenance and occupancy standards required by law."

Under Section 30(4) if a rental officer determines that a landlord has breached the obligation under Section 30, the rental officer may make an order requiring the landlord to comply with the obligation; authorizing any repair or other action; requiring the landlord to compensate the tenant for loss incurred as a direct result of the breach; or terminating the tenancy.

Section 30(5) requires a tenant to notify the landlord of any substantial breach of the obligation imposed by Section 30(1), and Section 30(6) requires the landlord to remedy the breach within 10 days.

Section 34(1) requires a landlord not to "disturb a tenant's possession or enjoyment of the rental premises or residential complex."

Under Section 34(2), if a rental officer determines that a landlord has breached the tenant's right to quiet enjoyment, the rental officer may make an order requiring the landlord to comply with the obligation; requiring the landlord to compensate the tenant for loss suffered as a direct result of the breach; or terminating the tenancy.

Section 39(1) requires a landlord to comply with any additional obligations that have been undertaken.

Under Section 39(2) if a rental officer determines that a landlord has breached an additional obligation, the rental officer may make an order requiring the landlord to comply with the landlord's obligation; requiring the landlord to compensate the tenant for loss suffered as a direct result of the breach; authorizing the tenant to take reasonable action to remedy the effects of the breach; or terminating the tenancy.

Section 43(1) requires a tenant not to disturb the landlord's or other tenants' "possession or enjoyment of the rental premises or residential complex."

Under Section 43(3), if a rental officer determines that a tenant has breached the obligation not to disturb the enjoyment of others, the rental officer may make an order requiring the tenant to comply; requiring the tenant to compensate the persons affected for loss suffered as a direct result of the breach; or terminating the tenancy.

Section 44(1) requires a landlord to investigate a complaint by a tenant that his enjoyment of the premises has been disturbed and to take appropriate action, including making an application to a rental officer. If the tenant is not satisfied with the action taken by the landlord, 44(2) authorizes the tenant to notify the rental officer.

Section 44(3) authorizes a rental officer to attempt to resolve the complaint filed by the tenant by seeking an agreement between the landlord and the tenant who made the complaint.

Section 45(1) requires a tenant to comply with any additional obligations agreed to as part of the tenancy agreement.

Under Section 45(4), if a tenant has breached an additional obligation, a rental officer may make an order (a) requiring the tenant to comply; requiring the tenant to compensate the landlord for loss suffered as a direct result of the breach; authorizing action to remedy the effects of the breach or terminating the tenancy.

Section 54(1) authorizes a landlord to terminate a tenancy on 10 days' notice if a tenant has repeatedly and unreasonably disturbed the landlord's or other tenants' possession or enjoyment of the residential complex or if a tenant has not complied with an order of a rental officer to rectify a breach of an additional obligation.

Complaints

Fair Practices/Rentals Officer, Department of Justice, Government of Nunavut.

Telephone: 1-867-975-7291.

Nunavut Housing Corporation is responsible for public and government staff housing.

URL: <http://www.gov.nu.ca>.

Telephone: 1-888-252-9869.

➤ ***Condominium Act (Nunavut)***

URL: <http://www.canlii.org/nu/sta/cons/pdf/Type033.pdf>.

➤ ***Tobacco Control Act***

URL: http://action.attavik.ca/home/justice-gn/attach-en_conlaw_postdiv/consSNu2003c13.pdf.

The *Tobacco Control Act* bans smoking in all workplaces and in some public places, effective February 1, 2004. Smoking is banned in the common area of apartments, condominiums, and all public places, whether or not a no-smoking sign is posted. Smoking is also not permitted in a three-metre radius surrounding any entrance to a public place. Anyone who contravenes these provisions is liable on summary conviction to a maximum fine of \$1,000 on a first offence and \$5,000 on a subsequent offence.

➤ ***Human Rights Act***

URL: http://action.attavik.ca/home/justice-gn/attach-en_sourcelaw/e2003snc12.pdf.

Complaints

Human Rights Tribunal.

Telephone: 1-866-413-6478.

➤ ***Landlord/Tenant Organizations***

None found.

Appendix 1: Key Studies on the Health Effects of Second-hand Smoke

The following list represents just a few of the largest and most important published reports on second-hand smoke. For a comprehensive overview of the issues regarding SHS exposure, visit the second-hand smoke section of the NSRA website.

1. U.S. Department of Health and Human Services, *The Health Consequences of Involuntary Smoking: A Report of the Surgeon General*, 1986. URL: http://www.cdc.gov/tobacco/sgr/sgr_1986.

This landmark report concludes that second-hand smoke causes lung cancer in adults and respiratory problems in children, and that simply separating smokers from non-smokers within the same airspace reduces, but does not eliminate, SHS exposure.

2. U.S. Environmental Protection Agency, *Respiratory Health Effects of Passive Smoking: Lung Cancer and other Disorders*, 1992. URL: www.epa.gov/smokefree/pubs/etsfs.html.

This report concludes that exposure to environmental tobacco smoke (ETS) — commonly known as second-hand smoke — is responsible for approximately 3,000 deaths each year from lung cancer in non-smoking adults and impairs the respiratory health of hundreds of thousands of children.

3. California Environmental Protection Agency, *Health Effects of Exposure to Environmental Tobacco Smoke*, 1997. URL: http://www.oehha.org/air/environmental_tobacco/finalets.html.

This report adds a number of new findings to the earlier reports by the Surgeon General and the EPA. The study concludes that exposure to second-hand smoke causes developmental problems in children including low birth weight and Sudden Infant Death Syndrome (SIDS), as well as respiratory effects including bronchitis and pneumonia, asthma induction and exacerbation, and ear infections, among other problems. As well the report concludes that in adults SHS is associated with lung cancer, nasal sinus cancer, and coronary heart disease morbidity and mortality.

4. Scientific Committee on Tobacco and Health, *Report of the Scientific Committee on Tobacco and Health, Part 2: Environmental Tobacco Smoke*, 1998. URL: <http://www.archive.official-documents.co.uk/document/doh/tobacco/part-2.htm>.

The Scientific Committee on Tobacco and Health (SCOTH) provides advice to the UK

Medical Officer of Health on the health effects of tobacco use. This report concludes that exposure to environmental tobacco smoke is a cause of lung cancer, with the increased risk for those with long-term exposure being in the order of 20–30%.

5. James Repace, Ichiro Kawachi, and Stanton Glantz, “Fact Sheet on Second-hand Smoke,” 1999. URL: <http://www.repace.com/factsheet.html>.

James Repace is an internationally recognized health physicist who specializes in the study of second-hand smoke. Formerly a senior scientist with the U.S. Environmental Protection Agency and now a private consultant, Repace has been called upon by many jurisdictions around the world to assist them in developing their smoke-free legislation. Repace has written and co-authored many other excellent reports on second-hand smoke and ventilation, with a focus on the hospitality industry. These reports can be found on his website at <http://www.repace.com/reports.html>.

6. Ontario Tobacco Research Unit, *Protection from Second-hand Tobacco Smoke in Ontario: A Review of the Evidence Regarding Best Practices*, 2001. URL: http://www.otru.org/pdf/special/special_ets_eng.pdf.

This is another excellent report that summarizes the evidence to date on the health consequences of exposure to second-hand smoke.

7. International Agency for Research on Cancer (IARC), *IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, Volume 83: Tobacco Smoke and Involuntary Smoking*, 2002. URL: <http://www-cie.iarc.fr/htdocs/indexes/vol83index.html>.

A scientific working group of 29 experts from 12 countries convened by the International Agency for Research on Cancer of the World Health Organization reviewed all significant published evidence related to tobacco smoking (both active and involuntary) and cancer. They looked at 58 major studies and found a 20–30% increased risk of lung cancer among non-smokers exposed to second-hand smoke.

8. Air Resources Board and Office of Environmental Health Hazard Assessment of the California Environmental Protection Agency, *Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant, As Approved by the Scientific Review Panel on June 24, 2005*. URL: <ftp://ftp.arb.ca.gov/carbis/regact/ets2006/app3exe.pdf>.

This report updates the findings of the 1997 report by the California Environmental Protection Agency. The report provides the scientific evidence being used by the California Environmental Protection Agency to support its case that environmental tobacco smoke be classified as a “toxic air contaminant.” Under state law, a substance

is classified as a “toxic air contaminant” if it can be proven that the substance “is an air pollutant which may cause or contribute to an increase in mortality, in serious illness, or which may pose a present or potential hazard to human health.” After a substance is identified as a “toxic air contaminant” (TAC), the Air Resources Board prepares a report determining the appropriate degree of control of a TAC, in consultation with the local districts, affected industry, and the public.

Appendix 2: Glossary

Absorption: The process whereby a gas or liquid permeates a solid.

Adsorption: The process whereby gas molecules adhere to a solid surface.

Atherosclerosis: A process whereby the arteries harden over time, which can result in reduced blood flow and rupture of the arteries and is often the precursor to a heart attack.

COPD (Chronic Obstructive Pulmonary Disease): There is some debate regarding how COPD should be defined and what diseases should be included in the category. Most of the scientific literature includes emphysema, asthma, bronchitis, and obstructive bronchitis as a form of COPD. These illnesses typically involve chronic coughing, phlegm production, shortness of breath, and wheezing.

Cotinine: A breakdown product of nicotine that can be detected in blood, hair, urine, and saliva and can be used as a measure of exposure to tobacco smoke.

Dose-response relationship: The higher the dose of a substance, the greater the response. In the case of second-hand smoke, research has shown that the higher the dose, in terms of number of cigarettes a person is exposed to or the duration of exposure or both, the greater the risk to the person's health.

Drifting smoke: This term is used throughout this document to refer to tobacco smoke that drifts or seeps into a residential unit from various sources, including through open windows or doors from a neighbour's patio or balcony or outdoor common areas; through electrical outlets, cable or phone jacks, or ceiling fixtures; through cracks and gaps around sinks, countertops, windows, doors; and through the ventilation system.

Indoor environmental persistence: How long the chemicals in cigarette smoke persist in an indoor environment after a cigarette has been smoked.

Litigation: The process of pursuing a legal proceeding/lawsuit in a court.

Mainstream smoke (MS): The smoke exhaled by a smoker after taking a puff.

Measurable quantity: A measurable quantity of second-hand smoke means the tobacco smoke can be measured using sensitive chemical samplers, although it may no longer be perceptible to humans.

Per se violation: A legal term meaning that a particular violation is specified/named in a law or regulation.

Perceptible quantity: A perceptible amount of second-hand smoke means that the tobacco smoke can be seen or smelled.

Second-hand smoke (SHS): A complex mixture of about 4,000 chemicals, both gases and fine particles, emitted by the burning of tobacco products (sidestream smoke) and from smoke exhaled by the smoker (mainstream smoke). Also called environmental tobacco smoke or passive smoking.

Sidestream smoke (SS): The smoke emitted from the burning end of the cigarette.

Sorbency: The ability of one substance to take up or hold another, either by *absorption* or by *adsorption* (gas molecules sticking to a solid surface).

Tar: A solid residue of tobacco smoke containing the by-products of burning tobacco-- sticky particles comprised of thousands of chemicals.

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