

6a-1

LEGISLATIVE SERVICES	
COPY TO:	FOR:
Chair	<input checked="" type="checkbox"/> Committee
CAO	<input checked="" type="checkbox"/>
Corporate Services	Council
Environment, Transportation and Planning Services	
Employee and Business Services	April 23/09 R.C.
Finance	
Health Services	<input checked="" type="checkbox"/> File <b>MOH</b> <input checked="" type="checkbox"/>
Human Services	
Peel Living	

March 26, 2009

TO: Hon. David Caplan, Minister of Health and Long-Term Care  
 Ministry of Health and Long-Term Care  
 80 Grosvenor St, 10th Flr  
 Hepburn Block  
 Toronto, Ontario  
 M7A 2C4  
[dcaplan.mpp@liberal.ola.org](mailto:dcaplan.mpp@liberal.ola.org)  
 Tel : 416-327-4300

TO: Mr. Charles Sousa  
 Mississauga South MPP  
 120 Lakeshore Road West  
 Units 1 & 2  
 Mississauga, Ontario  
 L5H 1E8  
[csousa.mpp.co@liberal.ola.org](mailto:csousa.mpp.co@liberal.ola.org)  
 Tel: (905) 274-8228

TO: Minister Margaret Best  
 Ministry of Health Promotion  
 777 Bay Street, 18th Floor  
 Toronto ON  
 M7A 1S5  
[margarett.best@ontario.ca](mailto:margarett.best@ontario.ca)  
 Tel: 416-326-8500

REFERRAL TO \_\_\_\_\_  
 RECOMMENDED \_\_\_\_\_  
 DIRECTION REQUIRED \_\_\_\_\_  
 RECEIPT RECOMMENDED

AND TO:  
 Ms. Patricia Mullin  
 Region of Peel Councillor – Ward 2  
 300 City Centre Drive  
 Mississauga, Ontario  
 L5B 3C1  
[pat.mullin@mississauga.ca](mailto:pat.mullin@mississauga.ca)  
 Tel: (905) 896-5200



APR 09 2009

REGION OF PEEL  
CLERKS DEPT.

Dear Honourable Government Officials:

"The *Smoke-Free Ontario Act* is designed to protect the health of all Ontarians by prohibiting smoking in all enclosed workplaces and enclosed public places in Ontario as of May 31, 2006." (the "Act")  
 (quoted from Ministry of Health Promotion (Ontario) website)

PLEA: LEGISLATION TO PROTECT RESIDENTS (ESPECIALLY CHILDREN) OF CONDOMINIUMS, MULTI-UNIT HOMES, ATTACHED AND SEMI-DETACHED DWELLINGS AND APARTMENTS FROM THE HEALTH (AND FIRE) HAZARD OF SECOND-HAND SMOKE ORIGINATING IN ADJACENT OR NEARBY UNITS

I am grateful for *The Smoke-Free Ontario Act*, grateful to the legislators and non-smoking activists who initiated the process to its fruition. It's so nice to go to a smoke-free restaurant and work in a smoke-free office. Government websites, literature, newsletters, etc. all emphasize the government's dedication to public health and the environment and this is truly appreciated.

We have enjoyed the benefits of the Act, however, these smoke-free environments have now caused us to especially be repulsed by cigarette smoke in non-regulated areas, including our homes. Will the laws ever address the protection of the private home owner by prohibiting smoking in adjoined privately owned dwellings (legislating people to smoke outdoors) if it is affecting their neighbour and/or a child (just like laws controlling a neighbour's loud music, other harmful gases and substances, etc.)?

I am a legal assistant and I reside in a semi-detached home in the Clarkson, Mississauga area. My mortgage has recently been paid off after 20 years, but there is no cause for celebration. I may have to put up a "For Sale" sign and leave my home.

I am writing on behalf of my husband and me, but also on behalf of others like us (and I am certain there are many), including Linda Fox, the woman who is written about in the enclosed recent article by the *Toronto Star*. We are the victims of heavy second-hand tobacco smoke infiltrating into our homes, adjoined to neighbours with a severe addiction – people who themselves are in need medical attention. Ms. Fox's experience closely resembles my own.

Ms. Fox moved into a smoking building. We, on the other hand, live in a semi-detached privately owned home adjoined to people who know that they are protected by the absence of legislation, that is, they know they can do as they wish in their own home, even if it affecting their neighbour.

Every spring, my husband and I can breathe a sigh of relief after enduring yet another winter in a polluted home. My neighbours will, hopefully, now smoke outside until the next time it is too hot or too cold, at which time they and their friends congregate in the basement of their home and smoke perpetually, even with a child in their home. This child's health is truly jeopardized living in that household as her proximity to the second-hand smoke is constant and unavoidable.

None of our complaints (both in person and in a friendly letter) have been answered with a positive reaction because they know they can do as they wish in their own home. They were quite hostile and reluctant to even discuss the issue. They know there is no law prohibit them from smoking indoors in their own home. My husband has a heart condition and I have asthma, conditions that are aggravated by second-hand smoke. Producing letters from medical specialists was also not effective in convincing them to smoke outdoors. The Non-Smokers' Rights Association has advised us of studies conducted in the U.S. proving that air filters do not lessen the health hazardous of cigarette smoke.

Our home has become non-habitable (not to mention not sellable). It is almost as if they have taken control of my home by taking control of the air we breathe in my home.

We have tried constructional measures to alleviate the smoke. Professional contractors have told us that, because of the extent of the smoke, renovations would not guarantee the stoppage of smoke infiltration from their home to ours. Some contractors even stated that the materials used in this type of renovation can be flammable. When people such as my neighbours smoke incessantly, from morning until late at night (one of them is unemployed; the other a part-time worker, so they are almost always home), it's only a matter of seconds before my home is polluted, even with a very thick cinder block wall separating the two adjacent homes.

We retained lawyers who wrote several letters threatening litigation. Thousand of dollars spent in legal fees have not resolved the issue. Lawyers advised against pursuing litigation as it would be costly and may not achieve a long-term solution. Seeking a court injunction would be gambling – the neighbours might not comply with the order and money would be wasted for reappearances in court to enforce the judgment.

You may ask why I do not move to another home. This is not the answer for many reasons. Going into debt again in these bad economic times would not be prudent, especially after having worked so hard to pay off my home. I find it so difficult to comprehend that my financial security is actually being

controlled by my neighbours' addiction and whether they choose to smoke outdoors. Even if we did move, we could only afford to move into another attached home, thus the possibility that the same problem would occur with other people is very likely – the statistics of smokers is very high. Furthermore, any prospective purchasers of my home would immediately detect the smoke – thus depreciating the value of my home. Yes, my financial security (and health) is in the hands of these smokers – should we surrender and move? Is this fair? Is it fair that Linda Fox had to pack her possessions and leave her home?

Needless to say, the potential for a fire always exists with smokers in the next house. Statistics of fires caused by cigarette smoking are high. If these people smoke (and drink) well into the evening, the chances of falling asleep with a lit cigarette is a constant threat. I enclose an e-mail from a co-worker whose home burned down after she moved out because of the smoke – thank goodness she left the home before the fire occurred.

We have exhausted all avenues in this matter. We now desperately ask our government officials to help – legislation is the only answer. Many smokers are cooperative and considerate with their neighbours, but this is not the case in my situation.

Do you foresee a law prohibiting indoor smoking in adjoined (privately owned) dwellings if a child, or the neighbour is being exposed to these carcinogens? I realize this is quite a drastic measure but it is the only answer. If people smoke in an adjoined dwelling with a child in the home, or causing pollution in the adjoined home, they should be fined (similar to the legislation regulating smoking in a vehicle with a child). People's peaceful lives are being destroyed by other people's addictions. Toxins are being inflicted on people who choose not to smoke and choose to try and remain healthy.

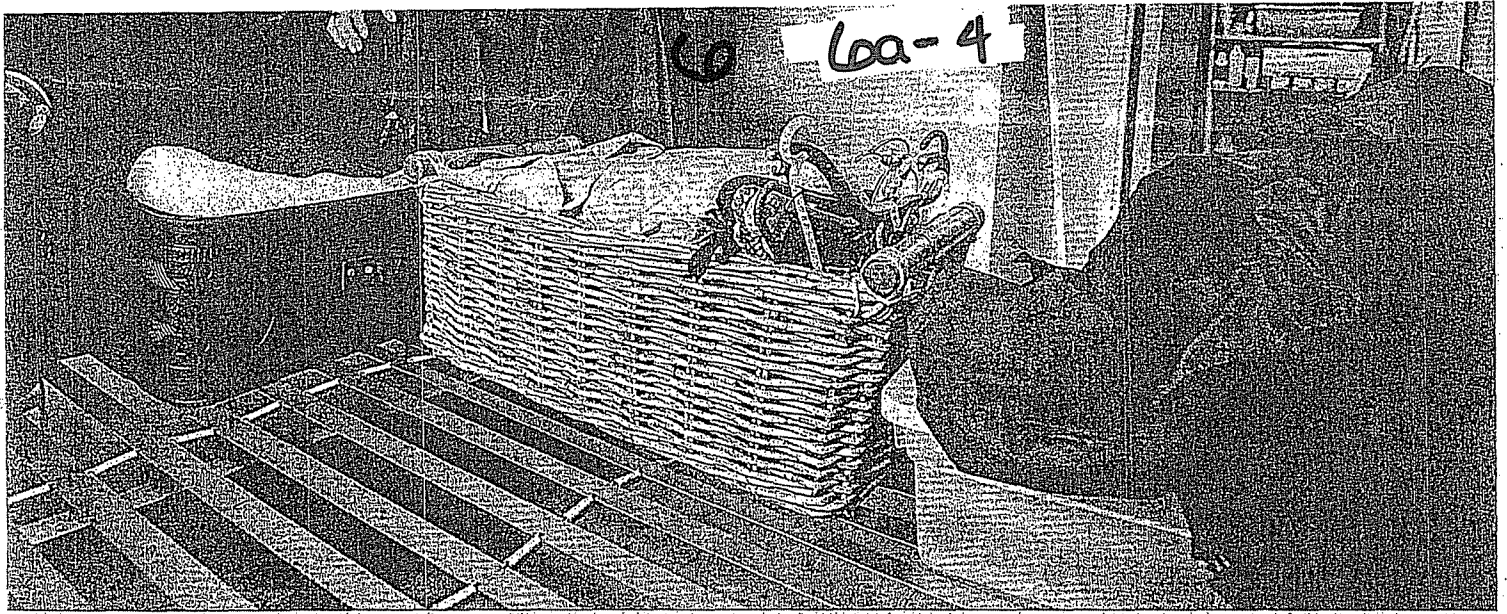
I anxiously await the enactment of legislation to address this serious health concern, which is also a burden to our medical system.

I apologize for the numerous recipients of this letter. It is my only way of publicizing what I truly believe is a universal problem. People are silently dealing with second-hand smoke in their homes, their sanctuary from the stresses of everyday life. Will I one day be able to breathe clean air in my home?

An on-line survey or newsletter or article in a newspaper, etc. to canvas members of the public would, I am certain, bring a voice to these people who are suffering in silence. I choose not to suffer and am counting on my government to put in force the much needed legislation.

It will be of interest to you that I have started a petition in this regard which people have been anxious to sign, especially the parents of small children.

Many thanks for your continuing services to the community. I am proud to be a Canadian that can write freely to my government and voice an opinion. Hopefully, this letter will enlighten our government representatives of the **enclosed private** areas that should be addressed in the Act. I have no hesitation in this correspondence being publicly printed (without my name and address). Mine is one voice which I am certain echoes the sentiment of many other Canadian citizens, especially the parents of young children.



AARON HARRIS/TORONTO STAR

Linda Fox packs her belongings last weekend in preparation for her move to escape the effects of second-hand smoke from a neighbouring apartment.

# Neighbours' smoke a hot issue for tenants

## Toronto woman seeks compensation after moving to escape neighbour's noxious cigarette fumes

**ROB FERGUSON**  
QUEEN'S PARK BUREAU

Headaches. Hoarse, dry throat. Dizziness. Shortness of breath. Rapid heartbeat.

These were the symptoms teacher Linda Fox had in her third-floor apartment on Davenport Rd. after a heavy smoker moved in below last August and dangerous fumes began seeping upward.

"One of my neighbours said it was like being in a stale bar after people were in there smoking all night," says Fox, who suffers from scleroderma, an auto-immune disease she says was made worse by second-hand smoke.

Within seven weeks, she'd had enough and went to stay with a friend. A week ago, she moved out of her home of 10 years into a new unit in a smoke-free building.

"It's really hard to find somewhere they can really guarantee it," says Fox, a teacher of English as a second language for the Toronto District School Board.

Anti-smoking activists say her experience points to the need for the Ontario government to bolster protections for residents of multi-unit buildings who find themselves in similar situations.

"Anybody who tries to do anything about this just runs into a brick wall," says Michael Perley of the Ontario Campaign for Action on Tobacco, who is calling for the government to create a "one stop-shopping" information centre on the issue.

Tenants can, for example, file complaints with the Ontario Landlord and Tenant Board on grounds that "reasonable enjoyment" of their living space is being compromised under protections in the Residential Tenancies Act.

But even in buildings designated in their leases as smoke-free, it is debatable how far landlords can go, acting against tenants who break the rules and light up, acknowledges Housing Minister Jim Watson.

"I have asked my staff for some clarification on what is allowable under the law."

Watson said he's trying to find out "what options are available to us," but they will not include a law banning people from smoking in their own homes, says Margaret Best, minister of health promotion.

"We want to strike a balance between people's rights. We do not intend to do that."

The landlord and tenant board

does not keep statistics on second-hand smoke cases, but there has been at least one eviction ordered in a case where a tenant in a rented condo unit smoked contrary to the rules and was ordered to pay \$10,000 in damages.

But in many cases, particularly in buildings not designated smoke-free, tenants are left to their own devices, which can include negotiating with smoking neighbours or with landlords or boards in co-op housing complexes, activists say.

**You're in a situation of trying to balance people's rights**

**JOHN FRASER, CENTRE FOR EQUALITY RIGHTS IN ACCOMMODATION**

"Unfortunately, you're often going to have to fight. It's not easy to ban people smoking in their units," says John Fraser, of the Centre for Equality Rights in Accommodation, a not-for-profit charity that helps people deal with housing issues from a human rights perspective. "You're in a situation of trying to balance people's rights."

Solutions can include trying to

seal apartments from seeping fumes, or charging ventilation to create positive air pressure that keeps second-hand smoke out.

The managers of Fox's co-op apartment complex on Davenport Rd. maintain they did their best trying to seal her unit against fumes from below, but it was not enough for Fox, who is seeking compensation for her almost \$600 a month in rent, moving expenses and smoky furniture that needs replacing.

"I honestly don't know what else I could have done for Linda," said manager Gloria Dynes. "There's no law in Ontario that we can kick someone out of their home because they're a smoker."

NDP justice critic Peter Kormos acknowledged the government must walk "a difficult and fine line" in any action it takes but must keep in mind the serious health dangers of second-hand smoke exposure.

The smokers' rights group MyChoice.ca considers any attempt to limit people from lighting up in their own homes or apartments "bullying," says spokesperson Arminda Mota in Montreal.

"I'm sorry, but I'm consuming a legal product. If someone says they're getting smoke from a neighbour, there's something wrong with that building and it has nothing to do with smoke. What about garlic smells? What about perfume?"

602-5

[About Us](#) | [Practice Areas](#) | [Star Columns](#) | [Title Insurance](#) | [Land Transfer Tax](#) | [Realty Clauses](#) | [Real Estate Terms](#)[Links](#) | [Contact](#) | [Site Map](#) |Search the Toronto Star Columns: 

Bob Aaron  
July 8, 2006

## Take smoking ban inside the home

Now that Ontario has introduced a province-wide ban on smoking in all enclosed public places and workplaces, it may be time to consider protecting residents of condominiums, multi-unit homes, attached and semi-detached dwellings and apartments from second-hand smoke originating in adjacent or nearby units.

This suggestion is made in a recently released backgrounder report by the Non-Smokers' Rights Association, or NSRA. Entitled *Exposure to Drifting Second-hand Smoke in Multi-Unit Dwellings*, the report notes that such smoke is a serious health hazard for many people living in what is essentially the same building. It is available on the NSRA website at <http://nsra-adnf.ca> and on this website at <http://www.aaron.ca>.

As society learns more about the dangers of exposure to second-hand smoke, it is ironic that many Ontarians 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.

There is no longer any room for debate that second-hand smoke is more than a nuisance. It is a toxic soup of more than 4,000 chemicals.

As long ago as 1992, the U.S. Environmental Protection Agency classified second-hand smoke as a Group A carcinogen.

More than 50 cancer-causing chemicals have been found in second-hand smoke, including arsenic, benzene and vinyl chloride.

6a-6

Exposure to second-hand smoke is the third leading cause of preventable death in Canada, after smoking and alcohol abuse.

Health Canada estimates that every year some 700 Canadian non-smokers will die of heart disease and 300 will die of lung cancer as the result of prolonged exposure to second-hand smoke. Reputable health organizations worldwide have concluded that there is no safe level of exposure to second-hand smoke.

No one would dispute anyone's right to smoke in their own residence, but a problem may arise for their neighbours when smoke emitted from the burning end of a cigarette (called second-hand smoke) drifts or seeps into an adjoining house, apartment or condominium unit from various sources, such as the following:

- open windows or doors, including patios and balconies
- electrical outlets, cable or phone jacks and ceiling fixtures
- cracks and gaps around sinks, countertops, windows, doors, floors, walls and ceilings
- a shared heating or ventilation system.

The seriousness of the issue of breathing unwanted cigarette smoke achieved considerable publicity late in May when 61-year-old Heather Crowe died of lung cancer just before the Smoke-Free Ontario Act came into force. Crowe never smoked a day in her life, but spent 40 years working in smoky bars and restaurants.

She became known for the television and radio commercials in which she told how she contracted lung cancer without ever having been a smoker.

Despite the laws and by laws which protect non-smokers from breathing cigarette or cigar smoke in the common areas of multi-unit dwellings, no legislative body has yet been prepared to address the issue of adults smoking in their own homes, whether or not the smoke affects other people.

According to the Non-Smokers' Rights Association report, in the absence of full co-operation from smoking tenants or owners in adjacent units, as well as the landlords, condominium boards and property managers, there may well be a need for tribunals, courts and lawmakers to address the issue.

(A word of disclosure here: I am volunteer chair of the NSRA, but the report was researched and written by staffer Pippa Beck without any involvement by me or the NSRA board.)

At the moment, claiming the right to breathe clean air in your own condominium unit, apartment or duplex can be an uphill struggle.

Those bothered by smoke from adjacent units are advised to attempt some form of negotiated resolution with their neighbours, property managers, condominium boards or landlords.

6a-7

Many would argue that this issue crosses the line of acceptability by infringing on the rights of smokers in their own homes. As non-smokers have enjoyed increasingly more smoke-free workplaces and public places, some smokers no doubt see their rights as rapidly being usurped.

Although I have yet to see no-smoking clauses in condominium declarations or residential leases, it is possible that some do exist. And it is even more likely such prohibitions will become increasingly common in the near future.

It may also turn out to be a good marketing technique if landlords and builders of multi-unit residential units and condominiums begin advertising their projects as smoke-free. Buyers and tenants could therefore be assured that they would never be subject to migrating second-hand smoke.

My guess is that smoke-free condominiums, multiplexes and apartment buildings will attract more occupants than they will deter. This was the experience in many restaurants when they became smoke-free.

If the suggestion about prohibiting smoking in multi-unit private residences where smoke can travel to adjacent units seems a bit over the top, it may be good to remember that it wasn't that long ago when smoking in restaurants, theatres, offices, banks and elevators was commonplace.

Public opinion and attitudes change over time in a sophisticated society. This proposal might be one change for the better.

*Bob Aaron is a Toronto real estate lawyer. He can be reached by email at [bob@aaron.ca](mailto:bob@aaron.ca), phone 416-364-9366 or fax 416-364-3818. Visit the column archives at <http://www.aaron.ca>.*