

Smoke Free Housing BC

Duty to Act:

When strata councils or property managers receive complaints about second-hand smoke causing a significant interference to residents in a condo complex, they are often reluctant to take action because the behavior of smoking is not specifically addressed in their bylaws, and thus they assume the behavior is not prohibited. But they would be wrong to assume that they have no authority or responsibility to address these complaints.

Virtually all strata corporations in BC have bylaws that prohibit behaviors that create a nuisance or hazard to another person or that unreasonably interferes with the rights of other persons to use and enjoy their premises.

Section 3(1) of the Schedule of Standard Bylaws states:

An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that:

- A. causes a nuisance or hazard to another person,
- B. causes unreasonable noise,
- C. unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot,

This bylaw can be used to address a variety of situations, and smoking would fall under this bylaw, whether the strata corporation has a specific non-smoking bylaw in place or not.

Strata corporations should be aware that a complaint about an unreasonable disturbance is not just an issue that must be addressed between neighbors. Section 26 of the Strata Property Act requires that a strata corporation enforce the bylaws. The corporation has a duty to exercise their powers and perform the duties of a corporation, including enforcing their bylaws. An owner could sue the strata corporation for making an unfair decision by failing to enforce its bylaws against a smoker. Further, courts might be sympathetic to owners who are compelled to enforce the bylaw themselves if the corporation doesn't act.

Investigate complaints:

Once the strata council or property manager receives a complaint of second-hand smoke:

a. Investigate the complaint.

Obtain information concerning the nature and extent of the problem. Ask the complainant to provide you with documentation of the source of the problem, severity, frequency, duration, impact of the smoke, as well as steps taken to date to mitigate the impact. The more information you collect, the easier it will be to resolve the problem.

b. Determine if the interference is a nuisance.

The challenge for strata councils or property managers is to determine whether the complaint about smoke infiltration is considered a legitimate 'nuisance' within the meaning of the law. According to the *Strata Property Act* bylaws, the nuisance must be unreasonably interfering with the use and enjoyment of the premises.

Based on case law in BC, the Courts have found that a number of factors will impact this decision, including:

- The Courts in BC have adopted an objective test for nuisance, meaning that it's not whether the complaining resident considers the smoke as a substantial discomfort or inconvenience, but whether the average person would take the same view.
- Another BC Court found that where the nuisance complaint involves residents living in a condo complex, additional factors must be considered when determining whether a nuisance is an actionable case. The Court found that in communal living complexes, residents are required to exhibit more cooperation and respect for others to ensure that all residents can enjoy their home to the fullest extent.

While it may be challenging to determine whether the interference is in fact unreasonable, there is sufficient case law to show that a strata corporation can obtain relief from the Court to stop behaviors such as smoking, where there is evidence that it is causing a nuisance to other residents of the complex. As such, the strata corporation has grounds and a duty to act.

Consider Negotiated Solutions:

If the strata corporation or property manager determines that the interference can be considered a nuisance, it is important to try to reach a solution that would minimize the impact of the behavior on the neighboring residents:

- Consider possible remedies that could minimize the smoke transfer, such as:
 - Weather-stripping around doors
 - Checking that the building ventilation system is working efficiently
 - Insulating air spaces around plumbing pipes and covering electrical outlets
- If the smoke cannot be eliminated, work with the affected parties to attempt a negotiated solution. You might consider having the smoking resident visit the complainant's home to get a sense of how serious and pervasive the problem is. This might induce the smoking neighbor to help find a solution.
- Consider solutions such as creating a designated smoking area outside on the building property, with a cover if necessary. The Council could also consider offering incentives such as free nicotine replacement therapy to help the smoking neighbor deal with times when smoking outside is not possible (such as evenings or weather conditions).
- If this is an escalating problem, the council could consider taking a leadership role by creating a non-smoking bylaw to ban smoking on the entire property, including individual strata units and outdoor balconies.

Implement Mandatory By-law Enforcement Procedures:

If there is evidence that the smoking is causing a nuisance for other residents in the complex, and a compromised solution cannot be reached, the strata corporation has a duty to initiate by-law enforcement procedures. Prior to obtaining a remedy for non-compliance of the smoking bylaw however, the strata corporation must first follow mandatory procedures for enforcing bylaws under Section 135 of the *Strata Property Act*.

This means that strata corporations must notify the smoking tenant of the complaint received against him or her, provide the particulars of the complaint and a reasonable time to answer each complaint, including the option of a hearing at a strata council meeting. It is important to emphasize that strata corporations must be especially vigilant about following the proper procedures as outlined under the Act. The Courts will not generally enforce the fines levied or other remedies initiated if the procedures have not been precisely followed. Once the strata corporation has complied with the proper enforcement procedures, and determines that there has been a breach of the bylaws, it can then choose from a variety of remedies, including:

- Fines
- Remedy the contravention
- Deny access to a recreational facility
- Evict (final resort)

If a council is faced with enforcing a nuisance bylaw because of smoking, they may want to consider seeking legal advice before proceeding.

Create or Amend Non-Smoking Bylaw for New Buildings

Consider the Type and Scope of Non Smoking Bylaw:

- Strata corporations can restrict smoking either by creating or amending a Bylaw or Rule:
 - With bylaws, a strata corporation can prohibit smoking in strata lots by amending the bylaws. Amending the bylaws to address smoking is recommended.
 - Rules are narrower in scope than bylaws and only apply to common property and common assets. Smoking cannot be addressed in strata lots through rules, and therefore this method is not recommended as a way to prohibit smoking throughout the building. If you do create a no-smoking rule, consider adding the rule to the bylaws so it will be filed in the Land Title Office and new owners will be aware of it at point of purchase.
- Consider the scope of the bylaw. In choosing the appropriate bylaw for your complex, keep in mind the nature and layout of the complex, and ensure it is connected to protecting the health of strata residents.

It is important to clearly set out which areas will be designated as smoke-free. Examples of the types of bylaws that you can adopt include:

- *Smoking Prohibition Bylaw*: bans smoking on the common property, limited common property such as balconies; and in strata lots.
- *Smoking Limitation Bylaw*: bans smoking on the interior common property, but not in individual strata lots or on the limited common property (balconies).
- *Smoking Limitation Bylaw*: bans smoking on the interior common property and on limited common property (balconies), but not on strata lots.
- While the newly amended *Tobacco Control Act* banning smoking in common areas and entrances of public buildings applies to condo complexes, strata corporations wanting to enforce a non-smoking bylaw on the common property may want to consider adopting a bylaw that includes this provision. This is to ensure that owners can't argue that they didn't know about the provincial laws.
- Regardless of the scope of the bylaw chosen, it must comply with all relevant legislation, including:
 - *Strata Property Act*
 - *Residential Tenancy Act*
 - *Human Rights Code*

Consider potential challenges to a Smoking Limitation or Prohibition Bylaw:

- Bylaws registered by an owner/developer prior to selling strata lots in a complex are generally subject to the same legal arguments and constraints as bylaws passed by a ¾ vote of the owners after strata lots have been sold.
 - While having the owner/developer create a smoking prohibition bylaw is most effective, and there is legislative support to adopt a non-smoking bylaw in a strata complex, there is also case law that could challenge the bylaw, including:
 - The *Human Rights Code*: argument that smoking prohibition bylaw discriminates against heavily addicted smokers. The HRC contains several provisions applicable to smoking bylaws, including:
 - Section 8: Discrimination in accommodation, service and facility
 - Section 9: Discrimination in purchase of property
 - Section 10: Discrimination in tenancy premises
 - Section 121, *Strata Property Act* – argument could be made that the smoking prohibition bylaw is not enforceable because it contravenes the *Humana Rights Code*

- Section 141, *Strata Property Act* –argument that the smoking prohibition bylaw establishes a screening criteria for tenants

Note: While these issues have not made it to the Courts, the issues may need to be considered when creating a smoking prohibition bylaw. It should be clarified that the posted legal opinion argues that smoking prohibition bylaws are legal and can be justified if smoking is banned in areas where non-smoking residents of the complex are put at risk. See sample Smoking Prohibition Bylaw.

Choose and Register appropriate bylaw:

Draft the smoking bylaw:

- Seek legal advice on final draft of bylaw
- Request Strata Association review bylaw if appropriate
- Owners/developers can register the amended set of bylaws that include smoking prohibitions. These bylaws are the bylaws for the strata corporation, unless repealed or changed at a later date under the provisions of the *Strata Property Act*.

Promote your Smoke-Free Strata Complex:

- Post “no-smoking” signage in appropriate locations on the property which complies with the amended BC *Tobacco Control Act* banning smoking in common areas of apartments and three meters from entrances.
- Register your smoke-free building online <http://www.smokefreehousingbc.ca>.

Create or Amend Non-Smoking Bylaw for Existing Buildings

Collect Information to Support a Smoking Bylaw:

- If migrating second-hand smoke is a problem, collect as much information as possible about how the smoke is infiltrating units in the building, the number of residents experiencing the problem and the impact on the health of residents. Collect information on the dangers of second-hand smoke and the benefits of going smoke-free.
- Smoke infiltration is a problem for over one-third of British Columbians living in multi-unit dwellings, and there is strong support for smoke-free multi-unit housing in BC. Plus, the vast majority of condo owners don't smoke, and those that do are already taking it outside.

Share Information and Seek Support:

- Talk to your neighbors to identify support for a non-smoking bylaw.
- Talk to your strata council members to raise awareness that this is an emerging issue and to seek support.
- Consider conducting a survey of owners to determine whether others have had a problem with smoke migration and identify support for a bylaw. A survey will help gauge support, as well as help identify the type of bylaw that would be supported by the majority of residents.
- Attend Council meetings to propose the idea of creating a smoking prohibition or limitation bylaw for the complex. This is a good opportunity to present the information collected on the benefits of and support for adopting a non-smoking bylaw.
- If Council is not supportive, consider conducting a petition to support a resolution to place the issue on the agenda of an annual general meeting, or requisition for a special general meeting to be held to address the non-smoking bylaw.

Choose the type and scope of the Smoking Bylaw: See same heading above.

Consider Grandfather Issues:

- Unlike in new developments, owners and tenants might argue that they be exempted from any newly amended smoking prohibition bylaw because they occupied or owned the unit before the bylaw came into effect.
 - If there are no smoking residents in the building, there may not be much opposition to a complete prohibition bylaw without a grandfather clause.
 - While section 123 of the *Strata Property Act* recognizes pre-existing rights in relation to pet and age bylaws, it does not deal with pre-existing rights for a behavior such as smoking. We are not aware of any case law to support the premise that an owner is exempt from a bylaw affecting behavior because it came into effect after the purchase.
 - Argument that a smoking prohibition bylaw would be unenforceable because it would reduce the ability of owners to sell a strata lot or the value of the property. However, there are many restrictive bylaws that may impact the ability to sell strata lots, including flooring, age and pet restrictions, so this argument is unlikely to be successful in court.
 - Special considerations regarding tenants - a tenant who already has a signed tenancy agreement, there are conflicts between the *Residential Tenancy Act* and the *Strata Property Act*. It is recommended that legal advice be sought before enforcing a Smoking Prohibition Bylaw against a tenant who resided in the complex prior to the Smoking Prohibition Bylaw being passed and registered.

Address potential Challenges to Smoking Limitation or Prohibition Bylaw:

- While having the owner/developer create a smoking prohibition bylaw is most effective, and there is legislative support to adopt a non-smoking bylaw in a strata complex, there is also case law that could challenge the bylaw, including:
 - The *Human Rights Code*: argument that smoking prohibition bylaw discriminates against heavily addicted smokers. The HRC contains several provisions applicable to smoking bylaws, including:
 - Section 8: Discrimination in accommodation, service and facility
 - Section 9: Discrimination in purchase of property
 - Section 10: Discrimination in tenancy premises
 - Section 121, *Strata Property Act* – argument could be made that the smoking prohibition bylaw is not enforceable because it contravenes the *Humana Rights Code*
 - Section 141, *Strata Property Act* –argument that the smoking prohibition bylaw establishes a screening criteria for tenants

Note: While these issues have not made it to the Courts, the issues may need to be considered when creating a smoking prohibition bylaw. It should be clarified that the posted legal opinion argues that smoking prohibition bylaws are legal and can be justified if smoking is banned in areas where non-smoking residents of the complex are put at risk. See sample Smoking Prohibition Bylaw developed by legal counsel to address issues of accommodation.

Implement Bylaw amendment procedures:

Once the Strata Council has explored all the issues concerning the type and scope of the bylaw, and there is sufficient support to move forward on a Resolution vote, specific bylaw amendment procedures must be followed to ensure legality and enforceability.

- Section 128 of the *Strata Property Act* outlines the bylaw amendment procedures needed to pass a smoking prohibition bylaw:
- Draft the bylaw and have reviewed by legal counsel (if appropriate).
- Send out written notice of annual or special general meeting, including the proposed new bylaw wording
- Bylaw must be passed by a $\frac{3}{4}$ vote of the owners in attendance, either in person or by proxy at the meeting
- For strata corporations with both commercial and residential strata lots, the voting formula is different, requiring a $\frac{3}{4}$ vote of the residential owners and a $\frac{3}{4}$ vote of the commercial owners.
- Ensure that the Council member or Managing Agent registers the bylaw in the Land Title Office within 60 days of approval to be effective and enforceable. Check that a filed copy is returned by the Land Title Office and included in the records.
- Inform owners and tenants of the new bylaw as soon as feasible after approved

Note: Consider presenting the smoking prohibition or limitation bylaw by separate resolution. Given that a smoking bylaw can be a controversial provision, you would not want to jeopardize an entire bylaw amendment package because of this provision.

By law enforcement remedies:

If there is evidence that the smoking prohibition or limitation bylaw or rule has been violated, prior to obtaining a remedy for non-compliance of the smoking bylaw or rule, the strata corporation must first follow the procedures for enforcing bylaws under Section 135 of the *Strata Property Act (SPA)*.

The Strata Corporation:

- Receives a complaint about a bylaw or rule infraction (i.e. smoking is occurring in an area that is designated as non-smoking under the bylaw).
- Provides the owner or tenant with notice of the complaint(s) received against him or her in writing, including the particulars of the complaint(s), such as date(s), time(s) and the conduct giving rise to the complaint(s). If the person is a tenant, give notice of the complaint to the person's landlord and to the owner.
- Provides the owner or tenant with a reasonable opportunity to answer each complaint, including an offer of a hearing before the Council if requested.
- Provides the person accused of breaching the bylaw with its written decision regarding the complaint and the enforcement to be taken as soon as feasible.

Note: It is important to note that trying to shorten the process or not strictly complying with the proper enforcement procedures could result in enforcement decisions being set aside by the Courts.

Once the enforcement procedures have been followed, and the council has decided that a smoking bylaw or rule has been breached, the Corporation has the option of obtaining various remedies under the *Strata Property Act*. These remedies include:

Internal Remedies:

- Imposing fines, including for continuing breaches of the bylaw without further compliance with the enforcement procedures
 - Requiring the person to pay the costs of remedying a contravention. For instance, requiring an owner to repay the costs of cleaning up discarded cigarettes on common property or cleaning a strata lot damaged by smoke; costs for insulating electrical outlets and ducting to keep smoke out; blocking holes or fixing air quality by updating ventilation systems.
 - Denying a person the use of a recreational facility if the breach was connected to the facility (i.e. smoking in the entertainment room)
 - Eviction of tenant – (final resort)
- Court-ordered remedies*
- The strata corporation may commence a petition in the Supreme Court of BC, with supporting Affidavits, for an order that the owner, tenant occupant or visitor stop contravening the Act, Regulations, bylaws or rules.
 - Based on case law, it could be argued that an owner, who is ordered by a Judge to comply with a Smoking Prohibition Bylaw and fails to do so, could be subject to an order to vacate his or her strata lot.

Note: if a strata corporation/agent is served with a notice of court action by an owner or are defending a human rights case, they should immediately contact their insurer – especially if an owner is asking for damages. The insurance company may pay for the costs of a lawyer.

Benefits:

There is a significant value in offering smoke-free buildings as an amenity that appeals to the majority of non-smokers. British Columbians are health conscious consumers. They are concerned about the health impacts to themselves and their family of being exposed to second-hand smoke (SHS) in their homes. That's why BC leads the country in smoke-free homes, and four out of five British Columbians do not allow smoking inside their homes. (BC Stats 2003)

There are many benefits for a strata corporation to adopt a non-smoking bylaw. A non-smoking bylaw will:

- Create a marketing advantage compared to other buildings that permit smoking
- Help protect your investment and save on maintenance costs
- Reduce fires
- Reduce management time dealing with second-hand smoke complaints
- Reduce costs of defending court challenges by owners suffering from exposure to second-hand smoke
- Help meet the LEED EQp2 (Environmental tobacco smoke control) requirements that are part of the LEED certification process.

In March/April 2008, we conducted an electronic survey among apartment owners, property managers and strata corporations in BC, who reported that no-smoking policies that were the most restrictive – such as banning smoking in all units and outdoor balconies – resulted in the greatest benefits to owners and corporations.

Laws and Legal Issues

Sample Non-smoking bylaw:

(1) Smoking is prohibited:

- (a) in a strata lot;
- (b) on the interior common property, including but not limited to in hallways, elevators, parking garages, electrical and mechanical rooms, stairs, storage locker areas;
- (c) on patios and balconies; and
- (d) within three metres of a door, window or air intake.

(2) All persons, including but not limited to owners, tenants, occupants and visitors must comply with this bylaw, with the exception that the bylaw does not apply to a smoker who is an owner, tenant or occupant residing in a strata lot in the complex at the time the bylaw is passed and who continues to reside there after the bylaw is passed. Notwithstanding the previous sentence, owners, tenants and occupants who qualify for the exemption from the bylaw as described in the previous sentence must still comply with all applicable legislation and are still subject to the common law of nuisance as well as all other bylaws, including but not limited to those about causing a nuisance or hazard to another person and unreasonably interfering with the rights of another person to use and enjoy the common property, common assets or another strata lot.

(3) Council must make reasonable accommodation, pursuant to section 8 of the *Human Rights Code* and the whole of the *Code* for a resident who has proven by medical evidence that he or she is physically and/or mentally disabled and is unable to control his or her addiction to nicotine. Whether the resident has proven the disability will be determined in the sole reasonable discretion of the Council. What accommodation will be made will be based on all of the circumstances and the accommodation may include but is not limited to:

- (a) allow smoking in one or more designated areas of the common property; and/or
- (b) paying for one or more treatment programs to assist with the cessation of smoking, including but not limited to paying for nicotine replacement therapy.

(4) Reasonable accommodation granted pursuant to subsection 3 may be for a fixed period of time at which time the resident is free to re-apply to Council for further reasonable accommodation be made.

(5) In addition to accommodation made under subsection 3, reasonable accommodation will be made by the Council if a resident proves that to not allow smoking would result in other discrimination prohibited by the *Human Rights Code*. Council, in its sole reasonable discretion, will determine whether or not the resident has proven that to not allow smoking would be discriminatory pursuant to the *Human Rights Code*. The Council will make reasonable accommodation in the case where a resident intends to use tobacco in relation to a traditional aboriginal cultural activity, or smoking is intended to be done by a prescribed group for a prescribed purpose. In making the accommodation the Council will only do so in writing and may prescribe in writing when the permission is granted for, the duration of the permission and where smoking will be allowed.

The Common Law of Nuisance:

Strata corporations and all residents of strata corporations in BC are protected by the common law action of 'nuisance'. Nuisance has a legal meaning, and it deals with the use of property of one owner that interferes with a neighboring owner's ability to use and enjoy their property. The law of nuisance attempts to balance competing uses of property, and Courts can intervene when the interference with another owner's use or enjoyment of the premises is unreasonable. Examples of potential interferences include noise, smell and vibration (i.e. from a hot tub).

Strata Property Act

In addition to relying on the common law of nuisance to address complaints of second-hand smoke, strata corporations can also deal with the smoking nuisance as a breach of their bylaws.

Pursuant to the Schedule of Standard Bylaws in the *Strata Property Act*, virtually all strata corporations in BC have bylaws that prohibit behavior that creates a nuisance or hazard to another person or that unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or individual strata lots. This can include smoking, regardless of whether the strata corporation has a non-smoking bylaw in place.

Section 3(1) of the Schedule of Standard Bylaws states:

Use of Property

3(1) An owner, tenant, occupant or visitor must not use a strata lot, the common property or common assets in a way that:

- a. causes a nuisance or hazard to another person,
- b. causes unreasonable noise,
- c. unreasonably interferes with the rights of other persons to use and enjoy the common property, common assets or another strata lot,

This Bylaw applies to all strata corporations in BC unless they have filed other bylaws that revises or repeals it. Strata corporations can rely on this section to address complaints of second-hand smoke by enforcing their bylaw. A bylaw that prohibits a 'nuisance' can be used to address a variety of behaviors and situations, such as smoking, loud noise or vibrations. To determine whether a given interference is unreasonable, a number of factors must be considered, including the type of complaint, the frequency and duration of the occurrence, the impact on health and the use and enjoyment of the premises. If the behavior is determined to be a nuisance, the Strata corporation needs to be willing to enforce these bylaws, by dealing appropriately with complaints, including following bylaw enforcement proceedings up to and including seeking relief in Court if necessary.

Failure to enforce the nuisance section of the bylaws may result in an owner bothered by smoke taking the position that the strata corporation has a statutory duty to enforce its bylaws, and that failure to enforce them is unfair to him or her. As a result, the non-smoker could seek an order of the Supreme Court of British Columbia that the strata corporation enforce its bylaws. Section 26 of the *Strata Property Act* supports the concept that a strata council has a positive duty to enforce the strata corporation's bylaws.

Tobacco Control Act:

While there are no provincial laws that regulate smoking in private residences of multi-unit dwellings, BC recently enacted legislation to ban smoking in common areas and entrances of condominium and apartment complexes.

Effective March 31, 2008, pursuant to section 2.3 of BC's newly amended *Tobacco Control Act*, smoking is banned in certain places to which the public is ordinarily invited or permitted access, including:

- Common areas of apartment buildings, condominiums and dormitories, including elevators, hallways, parking garages, party or entertainment rooms, laundry facilities, lobbies; and
- Within 3 meters (buffer zones) of public entranceways to apartment buildings, open windows and air intakes.

Note: This legislation does not apply to individual units or balconies in condominium or apartment complexes. It specifically avoids any attempt to regulate smoking in private residences.

Strata corporations and its managers are responsible for enforcing the smoking ban in common areas and entrances of apartment buildings. If the strata corporation is not able to enforce the legislation, they should contact their local Health Authority, and ask for a representative in the tobacco control area. Tobacco Enforcement Officers through the various health authorities are charged with the day-to-day enforcement of BC's tobacco control legislation.

In BC, some municipalities have enacted stronger buffer zone requirements than the province, including Vancouver, Surrey, Richmond and the Capital Regional District. Where municipal bylaws are stricter than provincial legislation, unresolved complaints should be made to the municipal bylaw enforcement department.

Human Rights Code:

The creation and enforcement of a bylaw that limits or prohibits smoking can be supported under the *Human Rights Code*. A demonstrated allergy or sensitivity to second-hand smoke could garner the protection of the Code. While there are no specific cases to date, it is possible that a strata owner could apply to the Human rights Tribunal on the basis that the strata corporation did not take reasonable steps to resolve a problem of second-hand smoke infiltrating the owners unit from a neighboring unit. An owner who suffers from a disability that is exacerbated by second-hand smoke, such as asthma or allergies, could take the position that the strata corporation has a responsibility to limit or ban smoking in order to accommodate the owner's disability. The owner could claim that the strata corporation has a duty to address the smoking as a nuisance under the bylaws, and should commence bylaw enforcement proceedings against the smoking owner.

Based on past decisions, strata corporations may need to make reasonable accommodation for owners with a disability that is caused by or worsened by second-hand smoke. This may include enforcing the existing bylaws already in place, or creating a new bylaw to restrict or ban smoking.

Case Law

Supreme Court case Raith v. Coles [1984] B.C.J. No. 772:

The owners of a strata lot applied for an injunction to stop their downstairs neighbors from smoking cigars. The owners proved that there was frequent and pervasive cigar smoke infiltrating their unit. They tried unsuccessfully to negotiate a solution and mitigate the impact, and had medical evidence that the smoke led to health problems. The Court ultimately found that the cigar smoke was a nuisance and granted the injunction to stop the neighbor from smoking in the strata lot.

The common law of nuisance allows both a strata resident and a strata corporation to seek an order restraining an occupant from smoking.

Popoff v. Krafczyk, [1990] B.C.J. No. 1935 (Q.L.) BC Supreme Court:

The courts of BC have adopted an objective test for nuisance, which applies the standard of how an ordinary reasonable person would view a situation. In this case, the Court approved the objective test as follows:

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"in every case it is not whether the individual plaintiff suffers what he regards as substantial discomfort or inconvenience, but whether the average man who resides in that locality would take the same view of the matter."

The Owners, Strata Plan NW 87 v. Karamanian [1989] B.C.J. No. 629 (Q.L):

Regarding nuisance complaints in strata complexes, the Courts have recognized that in communal living situations, there are additional factors that must be considered when determining whether there is a nuisance. In the Karamanian case, the court found that residents of a strata complex must exhibit more respect and cooperation for each other to ensure that each can enjoy their home to the fullest. The complaining neighbors complained that the vibrations from a Jacuzzi tub interfered with their quiet enjoyment of their home. The court granted the strata corporation's application and ordered that the Jacuzzi only be operated during specific hours of the day. This case illustrates that strata corporations can get an order restraining a resident from creating a nuisance even in cases when there is no evidence of a medical health problem resulting from the behavior.

BC Court of Appeal in Royal Anne Hotel Co. Ltd. V. Ashcroft et al (1979), 8C.C.L.T. 179:

Regarding the law of nuisance, many strata corporations have difficulty determining whether a specific behavior is a nuisance. There is case law that finds that a nuisance is an unreasonable interference, regardless of whether the nuisance arises from intentional acts undertaken for lawful purposes. For instance, an industrial plant that operates lawfully can still cause a nuisance if smoke or noise unreasonably invades the quiet enjoyment of neighboring land owners.

In this case, the court found:

"The test then is, has the defendant's use of this land interfered with the use and enjoyment of the plaintiff's land and is that interference unreasonable? Whereactual physical damage occurs it is not difficult to decide that the interference is in fact unreasonable. Greater difficulty will be found where interference results in little or no physical injury but may give offence by reason of smells, noise, vibration or other intangible causes."

This case illustrates how the law of nuisance tries to balance the rights of one owner with the right of another to the use and enjoyment of his or her home. Ultimately, the court can intervene when the one owner unreasonably interferes with another owner's use of the premises.