

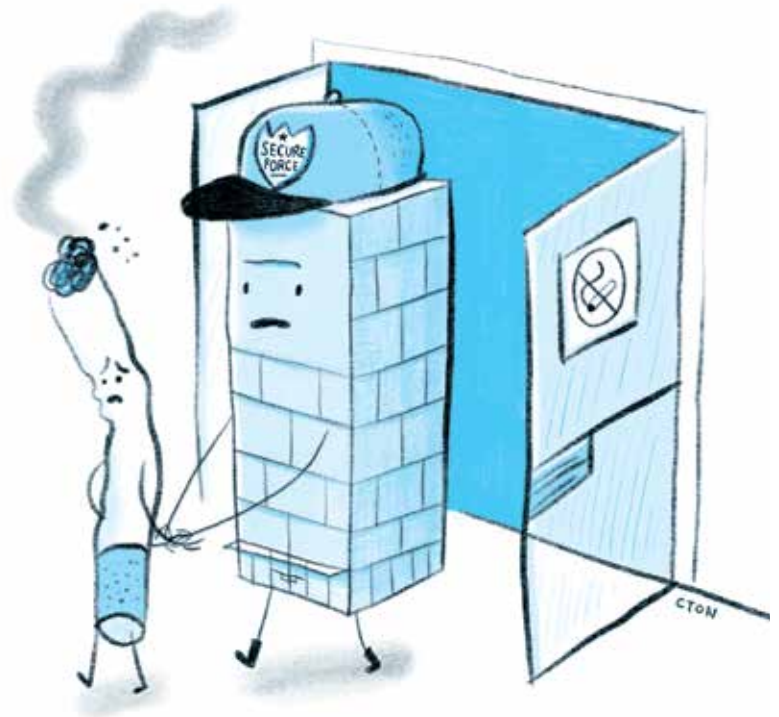


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Condo Living

Policing the Butt Flicker

Can We Effectively Address the Issue of the Butt Flick? In Short, There is No Perfect Solution



Based on recent media coverage, it would seem that condos are in the midst of a cigarette butt flicking epidemic. The more likely scenario is that this issue has persisted for condo corporations for quite some time and is simply the topic du jour. Irrespective of the foregoing, the butt flicker poses challenges to boards and property managers alike.

Whether you smoke or not, if you have an accumulation of cigarette butts on your balcony, the first response is typically one of annoyance - especially if there is a burn mark on your brand new balcony furniture. As an owner, it is wholly within your right to attend the Annual General Meeting and to convey your disdain for this activity and question what the board is doing to address the issue. When this happens, typically the floodgates open and the one complaint turns into ten.

The challenge from a governance perspective for the board or property man-

ager is identifying the culprit. If you are not catching the person in the act, then how is it possible to enforce compliance? If a cigarette butt is flicked off a balcony, and no one is around to see it ... you get my point.

So what is a board or property manager to do? How can one effectively address the issue of the butt flick? In short, there is no perfect solution. However, there are a number of steps that a condo corporation can take, which will likely result in a reduction of this activity.

First and foremost (and this goes for any compliance issue in a condo), residents need to be made aware of their obligations to report contraventions to management and security as they happen (and not once a year at the AGM). In this regard, the board should consider implementing a campaign to educate residents about the Rules (i.e. no flicking butts off balconies) and more importantly, how

and when to report contraventions of the Rules. The communication from the board to residents should be consistent and sent through numerous mediums.

Having said that, it is of utmost importance to also communicate a clear and concise plan of attack with property management and security. Everyone needs to be on the same page. For example, how does security or management investigate/respond to a complaint? How does security or management report the complaint? And lastly, what is the board doing to attempt to enforce compliance?

For compliance issues like cigarette butts where there is often no direct evidence (i.e. a witness to the contravention), it is important to gather as much indirect evidence to provide the board with tools to enforce compliance. Does your neighbor smoke? Was there a party in the unit above on Saturday night and 10 cigarette

butts on your balcony on Sunday morning? All of this information should be gathered by security and management and reported to the board.

An education campaign is limited and will not, in and of itself, eliminate the issue. If the issue festers and causes consternation amongst the residents, then the board may consider amending its Rules to prohibit smoking on the balconies.

The Smoke-Free Ontario Act already prohibits smoking in or on any common elements of a condo corporation including, but not limited to, the lobbies, hallways, elevators, garages, party rooms and guest suites. Unfortunately, balconies are not captured by this legislation as they are exclusive use common elements and the area in question is not enclosed.

Taking it one step further and upon careful advisement from the condo corporation's legal counsel, the board could also consider going smoke-free in the building (both in the units and on the balconies or terraces).

If the board wishes to go smoke-free, then there is value in discussing the benefits of including this prohibition in the Declaration or a Rule, the risks with either approach and whether there should be a period of time to grandfather existing smokers. An amendment to the Declaration requires the consent of either 80% or 90% of the unit owners, and this threshold may be unobtainable for some condo corporations. If so, examine the possibilities of passing a Rule for this purpose.

I know what you are thinking. If you grandfather existing smokers, then how will this rid the issue? By grandfathering existing smokers, you are able to identify the persons in the building who are smoking. The Declaration amendment or new Rule may require smokers to self-identify within a certain period of time. This is often the biggest hurdle in identifying the culprit. That said, the board will need to appreciate that rules are meant to be broken and other persons who are not grandfathered are likely to also be butt flickers. However, as time passes and grandfathered smokers move

out of the building, there will presumably be less grandfathered smokers and as a result, less butt flicks.

There have been a couple condo developments in the Ottawa region that have marketed themselves as a smoke-free building. My assumption is that this provision would be baked into the Declaration of those condo corporations. There may be a changing of the guard and more condo Declarations may contain a similar provision in the future; however, the overwhelming majority of condos will not have this provision in their Declarations and as a result, boards will be left with the dilemma on how to approach this issue.

I appreciate the above recommendations will not, by themselves, result in perfect compliance. In fact, perfect compliance is likely unachievable in any condo corporation, although boards' should strive for that goal. Inevitably, a butt will be flicked off a balcony and no one will see it. What is important is that the board, management, security and the residents know what to do when that occurs. **CV**

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