



Pair handed \$8K after rights denied by smoking neighbours

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A couple who say they became sick and anxious because neighbours were smoking on their balconies have been awarded more than \$8,000, despite presenting only "marginal" medical evidence to the B.C. Human Rights Tribunal.

Melanie and Matthew McDaniel filed the human rights complaint because they were unhappy with their strata's response to numerous complaints about the cigarette smoke wafting up from the suites below. They said the problem amounted to discrimination because it exacerbated their disabilities; Matthew suffers from Type 1 diabetes, while Melanie has extreme environmental allergies.

In a [decision](#) issued Monday, tribunal chairman Bernd Walter awarded the McDaniels compensation for the purchase of an air conditioner and naturopathic consultations, as well as "injury to their dignity, feelings and self respect."

Walter wrote that for much of the three years the McDaniels spent living in the Langley Metro One condo complex, "they were subjected to secondhand smoke to a degree they found beyond unacceptable and debilitating. During periods of increased smoke infiltration, their health risks and stress levels escalated."

He went on to say that the strata's response, "while not overtly aggressive or confrontive, was indecisive and minimizing of the McDaniels' distress to the point that they came to hate their home."

Melanie McDaniel kept a "smoke fume log" detailing the problem over a span of nearly two years, and wrote that the smoke caused her to suffer insomnia, sneezing, sore throat, hives, depression and anxiety.

The strata argued that the McDaniels had not provided enough medical evidence to prove the secondhand fumes had a more severe impact on them than it would on the rest of the population, but Walter said he was satisfied that the couple's health and happiness had been "severely diminished" by the smoke.

A previous tribunal [decision](#) had described the McDaniels' information about the specific health impacts they suffered as "marginal." An endocrinologist's report on the specific dangers of secondhand smoke for diabetics, according to the tribunal, "liberally crosses the line into advocacy rather than opinion evidence," and a letter from a naturopath "is not as clear as it might be."

However, the tribunal pointed out that there is "certainly some information" connecting secondhand smoke to increased health risks for the McDaniels.

The couple moved into the complex in March 2008, when Melanie McDaniel was pregnant with their first child. They made their first complaint about their neighbours' smoking a few months later, when the warm summer weather made it necessary to open the windows.

They were told that smoking was not prohibited in common spaces and advised to buy an air conditioner. The McDaniels made regular complaints about the smoke in the following years, but the strata acknowledged to the tribunal that it did not do enough to address their health concerns.

"The [strata] failed to seek or inquire into more fulsome information with respect to the extent of their physical vulnerabilities and responded with what can best be termed a patronizing or benign neglect, for a period of almost three years," Walter wrote in his decision.

That strata did, however, write letters to the people living below the McDaniels, asking them not to smoke on their patios, and suggest that the McDaniels gather the support of 25 per cent of owners in the complex to trigger a special meeting on the subject of a non-smoking bylaw.

The McDaniels were forced to leave the building in June 2011 because their home was foreclosed.