

Corrected Decision

This decision was amended to update typographical errors where “Peel Condominium Corporation No. 516” was incorrectly referred to as “PCC 51” instead of “PCC 516”.

CONDOMINIUM AUTHORITY TRIBUNAL

DATE: April 3, 2025

CASE: 2024-00746N

Citation: Peel Condominium Corporation No. 516 v. Depetrillo, 2025 ONCAT 52

Order under section 1.44 of the *Condominium Act, 1998*.

Member: Brian Cook, Member

The Applicant,

Peel Condominium Corporation No. 516

Represented by Greg Chellew, Agent

The Respondent,

Franco Depetrillo

Self-Represented

Hearing: January 14, 2025, to March 13, 2025

REASONS FOR DECISION

A. INTRODUCTION

- [1] Franco Depetrillo is an owner and resident of a unit in Peel Condominium Corporation No. 516 (PCC 516). In this application, PCC 516 alleges that Mr. Depetrillo smokes tobacco in his unit in contravention of its “Tobacco Free Environment rules” which prohibit smoking tobacco in any unit or common elements. The rules create a legacy exception for people who smoked at the time the rule was adopted. The rules were adopted in May 2021. Mr. Depetrillo does not qualify for legacy status under the rules because he purchased his unit in 2024, after the rules were adopted.
- [2] The PCC 516 rules also prohibit smoking or vaping cannabis, except for people who have legacy status.

- [3] There is no dispute that Mr. Depetrillo smokes cannabis in his unit. As discussed, below, PCC 516 has agreed to allow him to smoke cannabis in his unit as an accommodation for a disability.
- [4] Mr. Depetrillo denies that he smokes tobacco in his unit although during the hearing, he advised that he does add tobacco to the cannabis joints. He said this is also medically necessary.
- [5] When the application was first filed and delivered to Mr. Depetrillo, he did not join the case. He later contacted the Tribunal and advised that he does not have access to the internet and so could not join the case. Following confirmation that Mr. Depetrillo wanted to participate in the hearing but could not participate on-line, arrangements were made to modify the Tribunal's usual approach.
- [6] The hearing was conducted by telephone conference call. All documents filed by PCC 516 were uploaded to the Tribunal on-line dispute resolution system and a paper copy was provided to Mr. Depetrillo by PCC 516 management. Mr. Depetrillo submitted documents by providing a paper copy of the document to management which then uploaded them to the system. Paper copies of directions from me were similarly dealt with.

B. RESULT

- [7] For the reasons that follow, I find that it is more probable than not that Mr. Depetrillo smokes cigarettes in his unit in contravention of the condominium's rules. I order Mr. Depetrillo to immediately stop smoking cigarettes in his unit.

C. EVIDENCE AND ANALYSIS

- [8] Mr. Depetrillo took possession of his unit in January 2024. He agrees that he regularly smoked in his unit after moving in and that friends would also smoke in the unit. He testified that he was not aware of the no smoking rules at that time and indicated that he would not have purchased the unit if he had known. PCC 516 noted that there are many signs around the property reminding people of the no smoking rules and that the rules were identified in the status certificate provided to Mr. Depetrillo before purchase and the rules were also provided. Endrita Hyka, the condominium manager, testified that she recently spoke to Mr. Depetrillo's real estate agent, and he confirmed that he informed Mr. Depetrillo about the smoking rules before the purchase.
- [9] PCC 516's evidence is that it began to receive complaints about smoking odours coming from the unit soon after Mr. Depetrillo moved in. He told Ms. Hyka that he

smoked tobacco and marijuana in his unit and that he knew that other residents also smoked. She agreed that other residents smoked, but that they did so under the legacy provisions of the rules which did not apply to Mr. Depetrillo.

- [10] Mr. Depetrillo advised PCC 516 that he needs to smoke marijuana to help manage significant disabilities. He provided a note from a doctor that indicates that Mr. Depetrillo takes medical marijuana for management of chronic pain. The note is dated November 2023, before Mr. Depetrillo moved into his unit.
- [11] Mr. Depetrillo testified that he must consume cannabis by smoking. He said that he had tried “gummies” but had concerns about the dosage. He said he has never tried other cannabis products.
- [12] Mr. Depetrillo’s request for accommodation to allow him to smoke cannabis in his unit caused some difficulty for PCC 516 because another resident has a severe anaphylactic allergy to cannabis smoke. PCC 516 granted Mr. Depetrillo’s accommodation request and installed an air filter in his unit and another outside the unit door to try to contain the cannabis odours. It also retained an engineering firm to investigate methods of reducing smoke transmission from the unit. These measures were paid for by PCC 516. The engineer identified a number of cracks and openings in the unit that could allow smoke transmission. Some of these were repaired by the engineer and who also made recommendations about other things that could be done, including applying weather stripping around the unit entrance door. It is not clear if weather stripping has been properly installed.
- [13] Mr. Depetrillo testified that he does not smoke tobacco in his unit. However, he clarified that he does add tobacco when preparing a cannabis joint. He estimated that he adds about one half of a cigarette and that he smokes about four joints a day. Mr. Depetrillo provided a brief note from a doctor, dated November 6, 2024, which states that Mr. Depetrillo “needs to use tobacco with his medical marijuana to control pain”. Mr. Depetrillo testified that he needs to add tobacco to help dilute the effects of the cannabis and to help the cannabis burn properly. He indicated that smoking of either cannabis or tobacco is not ideal because his disabilities include significant lung function issues.
- [14] It is not clear if PCC 516 was aware that Mr. Depetrillo has been adding tobacco to his medical marijuana. However, at the hearing, PCC 516 advised that it was prepared to waive its right to seek clarification of these issues and that it would grant a further accommodation to allow Mr. Depetrillo to add tobacco to his marijuana. However, PCC 516 asserts that there have been ongoing complaints of significant tobacco odours that exceed odours from the limited tobacco added to the marijuana.

- [15] PCC 516 advised that the filters reduce the cannabis odours, but do not sufficiently contain tobacco odours coming from Mr. Depetrillo's unit.

Does Mr. Depetrillo smoke cigarettes in his unit?

- [16] PCC 516 provided evidence to support the allegation that Mr. Depetrillo smokes tobacco. Written and oral testimony was received from five residents. The witnesses noted that Mr. Depetrillo's unit is near the lobby area and entrance. Everyone entering and exiting the building passes by Mr. Depetrillo's unit. The witnesses say that tobacco odours are very noticeable in the lobby area and that they also migrate to the elevators.
- [17] One of the witnesses said that her unit is near Mr. Depetrillo's unit. She has lived there for over 20 years and never experienced the level of smoking odours she has experienced since Mr. Depetrillo moved in, even before the smoking rules were adopted. She said that the odours are present all the time and are often "overwhelming". She is particularly impacted as she has asthma. She notices tobacco and marijuana odours and another odour that she cannot identify but which is "vile". The odours sometimes migrate into her unit.
- [18] PCC 516 provided 295 incident reports made in the period February 2024 to March 2025. Some of these appear to be about complaints made on the same day. The reports indicate that complaints of strong cigarette smoke odours coming from Mr. Depetrillo's unit were verified.
- [19] Mr. Depetrillo questions whether the complained of odours are coming from his unit. He noted that there are other units in the building where smoking occurs.
- [20] Ms. Hyka confirmed that there are three units on the ground floor, where Mr. Depetrillo's unit is located that have legacy status under the smoking rules. However, her evidence is that no complaints have been received about unreasonable odours from these units. None of these other units are in proximity to Mr. Depetrillo's unit. Altogether, there are about 40 legacy status units out of about 400 total units in the building.
- [21] As noted, Mr. Depetrillo's evidence is that he does not smoke tobacco in his unit, apart from the tobacco added to his marijuana. He testified that he smoked for over 40 years and quit after multiple hospitalizations. He said that he does still smoke three to four cigarettes but considers that, relative to his previous consumption, he has quit smoking. He said that he smokes these cigarettes outside and not in his unit.

- [22] Mr. Depetrillo said that his furniture has a residual tobacco smoke odour. He attributes this to his prior years of smoking. He said that people do sometimes complain that he has a cigarette odour on his clothing, and he thinks this is because the odour may transfer from his furniture.
- [23] Mr. Depetrillo receives assistance from a personal support worker (PSW) and she was present at the second telephone conference call of the hearing. She testified that she has been attending Mr. Depetrillo for about eight months and visits three times a week. She noted that clients are not permitted to smoke when she is attending to them. She testified that she has never smelled tobacco odours in Mr. Depetrillo's unit although she has smelled cannabis odours.

D. FINDINGS

- [24] I accept the evidence of the witnesses called by PCC 516 that there is a noticeable and sometimes strong smell of tobacco smoke in the area around Mr. Depetrillo's unit that permeates the lobby area. Their evidence is corroborated by the security incident reports. I accept that the odour is unreasonable and results in a nuisance for other residents.
- [25] On Mr. Depetrillo's evidence, he did smoke in his unit when he first moved in, which was in contravention of the rules. This resulted in the complaints from other residents and investigation by security I have noted. The evidence indicates that there were no complaints of cigarette odour in the vicinity of Mr. Depetrillo's unit before he moved in. The evidence further indicates that the complaints have continued even after Mr. Depetrillo says he stopped smoking cigarettes in his unit.
- [26] I do not accept that the evidence of the PSW establishes that Mr. Depetrillo does not smoke in his unit. Her evidence that she has not noticed cigarette smoke odour is not consistent with Mr. Depetrillo's evidence that his furniture and clothing have a smoke odour.
- [27] I find that it is more probable than not that Mr. Depetrillo has regularly smoked cigarettes in his unit in contravention of the rules established by PCC 516. On the basis of the evidence from PCC 516, I find that Mr. Depetrillo's ongoing violation of the rules has resulted in unreasonable odour which results in a nuisance for other residents.
- [28] It is also now apparent that Mr. Depetrillo does consume tobacco in his unit because he adds about half a cigarette to each joint. He said he usually consumes four joints per day, so he is smoking the equivalent of two cigarettes a day. If I am wrong in concluding that Mr. Depetrillo smokes cigarettes in his unit in addition to

the tobacco added to his cannabis, and if the odours noted by other residents and security is all coming from the tobacco he adds to his cannabis, it may be necessary to revisit the accommodation request to add tobacco to his cannabis to see if the medically required cannabis consumption can be accommodated in some other way.

E. COSTS

[29] At the hearing, PCC 516 advised that if Mr. Depetrillo stopped smoking cigarettes in his unit, it would not seek any compensation or legal costs. I understand this to mean that PCC 516 may seek compensation and costs if Mr. Depetrillo continues to smoke cigarettes in his unit requiring further legal action but that for the purpose of this application, costs and compensation are not sought. On this basis, I make no order respecting costs or compensation.

F. ORDER

[30] The Tribunal Orders that:

1. Effective immediately, Mr. Depetrillo must stop smoking cigarettes in his unit.

Brian Cook
Member, Condominium Authority Tribunal

Released on: April 3, 2025