

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

SKINNYDIPPER SERVICES INC.

PETITIONER

AND:

CITY OF SURREY and LAURIE CAVAN

RESPONDENTS

AFFIDAVIT OF PAUL ANDREASSEN

I, PAUL ANDREASSEN, of 5929 133 Street, Surrey, B.C., make oath and say as follows:

1. That I am the President of the Petitioner, Skinnydipper Services Inc., and have personal knowledge of the matters to which I have hereinafter deposed, except where stated to be on information and belief in which case I verily believe them to be true.
2. I have read the Petition, and particularly the Facts in the Petition.
3. The matters in paragraphs 1-7 of the Facts in the Petition are true.
4. The Petitioner is a British Columbia company dedicated to providing services of particular interest to nudists and naturists, including web hosting and e-mail services for nudist and naturist clubs, organizations and individuals, and monthly nude swims for members.
5. The Petitioner currently hosts nude swim nights from September through June on the second Saturday of each month at the Renfrew Pool in Vancouver. These swims have been running since May 2003, interrupted only by pool maintenance and refurbishment intervals. Monthly nude swims are hosted by other nudist/naturist organizations at Templeton Pool and Lord Byng Pool in Vancouver, and William Griffin Pool in North Vancouver. January 28, 2008 will mark the 30th anniversary of nude swims in North Vancouver. Attached and marked as "**Exhibit A**" to this my Affidavit is a brochure

detailing various nude or clothing optional recreation opportunities in the Lower Mainland for 2006/07.

6. The relationship between the Petitioner and the staff at Renfrew pool is excellent. There has never been any problem in providing lifeguard staff for the events. There are and have been no concerns raised with respect to health in our nude use of the facility. At each event, the Petitioner's staff take full responsibility for preparing the facility for our use including covering all windows with opaque material and establishing an admission desk in the facility lobby. Admission to the facility during the events is controlled by the Petitioner's staff and is limited strictly to those persons identified as members of the club. Frequently, during our event times, there are other groups present who are renting other parts of the community centre in which the pool is located. Although our group is well identified, by signage, that we are a nudist group, there has never been any friction between us and other groups.
7. In 2002 and 2003, an informally organized group of nudists/naturists, to which I then belonged, rented the Newton Wave Pool facility (the "Wave Pool") in Surrey one night a month for nudist use. During the time that the group was renting the Wave Pool, we had an excellent relationship with all the staff at the facility.
8. At the outset, we expressed a concern that there might be difficulty in finding enough lifeguards to staff our events but were assured by Ms. Nancy Ducharme, the Wave Pool Office Supervisor, that they could draw upon lifeguard staff from the entire City Parks department and that it would not be a problem. This, in fact, turned out to be the case and there was never a problem having lifeguards for our events. No staff members were ever forced to work at our events and only persons who indicated that they would be comfortable working at nudist events were asked to do so.
9. While discussing the arrangements for our events, Ms. Ducharme suggested to me that our group might be interested in cooperating with another group that was, at that time, also renting the pool, as they had similar requirements to our own. She told me that a Muslim women's swim club was renting the Wave Pool periodically and that they required not only that the windows be covered but also that all lifeguard staff be female only. They also required that all male staff be absent from the building during their

events. She suggested that we might be able to share the window covering materials that both groups would need.

10. In January 2003, the City's General Manager of Parks, Recreation and Culture cancelled the group's facility rental permits for February 8th, March 8th, April 12th, May 10th and June 14th of 2003. The General Manager advised us that nude swim activity is in contravention of sections 42 and 43 of the *Parks, Recreation and Cultural Facilities Regulation By-Law* (the "Parks Bylaw"). She also advised that facility rental permits require licensees to strictly observe and perform all requirements of all regulations and by-laws relating to the full facility. Attached and marked as "**Exhibit B**" to this my Affidavit is a letter dated January 16, 2003, from Ms. Laurie Cavan, then the City's Manager of Community & Leisure Services.
11. In February 2003, Mr. Rick Palliardi, Public Health Inspector with the Fraser Health Authority, advised me that the health department was not aware of any health concerns with respect to the use of the Wave Pool and bathing without swimming attire. Attached and marked as "**Exhibit C**" to this my Affidavit is a letter from Mr. Palliardi dated February 20, 2003.
12. On March 10, 2003, I appeared at a Council-in-Committee meeting at Surrey City Hall, at which I protested the unilateral cancellation of our pool rental arrangements. I requested that our group meet with City Staff in order to work out any specific concerns raised by Staff and Council in order that we would be able to continue operating the swim events. We presented the information from the Fraser Health Authority and indicated our willingness to negotiate with City Staff to implement any reasonable measures to address their concerns. We stated to Council our concern with the interpretation of the bylaw and its application to private rentals. Specifically, we argued that "proper bathing attire" for a private nudist event *is* nudity.
13. By letter dated March 31, 2003 (now attached and marked as "**Exhibit D**" to this my Affidavit) I was notified that Council, in a closed meeting, had affirmed the action of staff in cancelling our pool rental agreements.
14. Ms. Cavan agreed to a meeting with our group later in the summer of 2003. At that meeting our group was informed that City Staff had a number of concerns regarding the

use of the Wave Pool for nude swim activity, including the organization and structure of the sponsoring organization, general access to the events, clear identification of the sponsoring organization and scheduling of the facility following the pool's renovation. In addition, the interpretation of the "proper bathing attire" provision in the Parks Bylaw was raised as a major issue.

15. Over the next year, I worked toward the creation of a formally and legally structured entity that would be able to approach the City to re-establish the nudist events. The result was the creation, in September 2004, of Skinnydipper Services Inc., an organization with the specific purpose of serving the recreational, educational and informational needs of the local nudist/naturist community. A majority of the people from the original group became shareholder participants in the new company.
16. In December 2004, as president of the new company, I wrote to Ms. Cavan to advise that, through Skinnydipper Services Inc., we wanted to re-establish the monthly nudist swim nights at the Wave Pool, and I requested a meeting with her. In that letter I indicated that the current swim events, in Vancouver and North Vancouver, while popular, do not well serve the nudist community of the Fraser Valley. In all the time since then, neither Ms. Cavan nor any other Surrey Staff member has consented to a meeting with us. Attached and marked as "**Exhibit E**" to this my Affidavit is a copy of my letter to Ms. Cavan, dated December 14, 2004.
17. Over the ensuing 18 months, I contacted City staff on a number of occasions to discuss this matter with the hope of coming to a reasonable arrangement, with little success. I repeatedly pointed out that the objections held by City Staff, for the most part, had either been addressed by us or could be overcome by efforts on our part. All of the objections raised by the City, with the exception of the interpretation of the bylaw, have been purely practical and could have been handled easily through fair and reasonable negotiation in good faith. Attached and marked as "**Exhibit F**" and "**Exhibit G**" to this my Affidavit are copies of letters dated March 18, 2005 to Councillor Bob Bose and March 10, 2006 to Nancy Ducharme, Office Supervisor for the Wave Pool.
18. Finally, on March 28, 2006, Ms. White, Surrey's current Manager of Community & Leisure Services, wrote to the Petitioner and advised that Surrey was not currently able to accommodate our rental request. She stated that rental opportunities had been

decreased because of later closing times for public swims and new late-night youth programs that were to be implemented at the Wave Pool over the spring according to the Newton Revitalization Project. Further, she stated that new renovations to the facility increased the difficulty in ensuring adequate protection from public view. Attached and marked as “**Exhibit H**” to this my Affidavit is a copy of Ms. White’s March 28, 2006 letter.

19. In May 2006, I reiterated our request to Ms. White for a private rental of the Wave Pool on a monthly basis and stated that there was nothing in her letter that would preclude our use of the facility in the same manner we did previously. I stated that we only desired use of the facility one night a month and would accept a rental time from 10:00 pm to midnight – after the public had time to leave the facility. We are able to control access to the facilities that we rent and are experienced in doing so. We do not permit entry to any of our events except to our club members. Finally, I advised that the amount of windows that needed to be covered at the Wave Pool was only 30% of what we already do at the Renfrew Pool in Vancouver, and that we are able to cover all the windows at Renfrew before our event begins in under 20 minutes. Attached and marked as “**Exhibit I**” to this my Affidavit is a copy of my letter to Ms. White dated May 12, 2006.

20. On June 26, 2006, Ms. Cavan responded to our further request and advised that Surrey was unable to provide rental opportunities for nude swimming sessions at any City of Surrey Recreational Facility, for the following reasons:

- a. Friday and Saturday nights were unavailable for private rentals because Surrey wanted to be able to provide more opportunities for late night youth activities;
- b. There were health concerns with respect to the cleaning program at the facility and users not in proper bathing and fitness attire;
- c. Surrey’s lifeguard staff were not able to guard a swim where users are not in suitable bathing attire; and
- d. Facility rental for nude swimming activity would contravene s. 42 of the Parks Bylaw.

Attached and marked as “**Exhibit J**” to this my Affidavit is a copy of Ms. Cavan’s letter.

21. In answer to Ms. Cavan's objections outlined in the previous paragraph, I say the following:

- a. The Wave Pool is available for rental on Friday and Saturday nights, depending on who is requesting the rental. In November 2006, a member of the Petitioner applied for a facility use permit to hold a "Birthday Party" at the Wave Pool on a Saturday night. On November 14, 2006, Surrey issued the member a permit to hold a "private pool party" on Saturday, November 26, 2006 from 9:15pm until 11:00pm. Attached and marked as "**Exhibit K**" to this my Affidavit is a copy of the Facility Use Permit.
 - b. The letter from Mr. Palliardi of Fraser Health, discussed in paragraph 7, above, addresses the City's health concerns adequately. In addition, a nearly 30-year history of nude swims in City of Vancouver swimming pools shows that such events are hardly a health concern.
 - c. Paragraph 4, above, shows that events such as ours can run without staffing problems. We have not demanded that anyone be forced to work at our events, only those qualified persons who are willing to do so. Paragraph 5, above, shows that there were no problems having willing staff work the nudist events at the Wave Pool in 2002 and 2003. The City of Surrey is the second largest city in the province with staffing resources comparable to the City of Vancouver and far exceeding that of the District of North Vancouver. I believe there would be sufficient staff willing to work events such as ours.
 - d. We have already argued before Council, as described above in paragraph 8, that "proper bathing attire" for a private, nudist event, is nudity. I believe that the City's interpretation of s. 42 of the Parks Bylaw, as prohibiting private nudist events, clearly shows that the City's motivation is to impose a moral stand against nudism itself.
22. To expand on paragraph 19(c), above, there are private nude swims in rented public facilities currently running in Kamloops, Kelowna and Victoria, in addition to those previously mentioned. There have also been private nude swims previously held in Penticton and West Vancouver. Furthermore, I am aware of additional private nude swims taking place in Calgary, London, Newmarket, Ottawa, Toronto and Halifax.

23. The Petitioner is not asking for special treatment different from that accorded to other groups similarly linked together by philosophy. We are asking for the same status as any other group requesting access to publicly owned facilities – i.e. that we not be rejected merely because of our beliefs. I believe that Surrey is capable of accommodating groups with unique beliefs, as demonstrated by its dealings with the Muslim women’s swim club, as described in paragraph 5.

24. Based on the above facts, I believe that the Petitioner has adequately addressed all practical considerations with regard to a nudist group having rental access to public facilities for private, nude use. I further believe that the City of Surrey’s continuing refusal to issue the Petitioner a Facility Use Permit is based entirely on moral considerations about nudist/naturist activities and lifestyles.

SWORN BEFORE ME in the
City of Vancouver
in the Province of British Columbia,
on May __, 2007

A Commissioner for taking Affidavits in and
for the Province of British Columbia.

Paul Andreassen