

No.  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN:**

SKINNYDIPPER SERVICES INC.

**PETITIONER**

**AND:**

CITY OF SURREY and LAURIE CAVAN

**RESPONDENTS**

**PETITION TO THE COURT**

THIS IS THE PETITION OF: Skinnydipper Services Inc.  
1321 Johnston Road  
White Rock, B.C. V4B 3Z3

ON NOTICE TO: The City of Surrey  
14245 – 56 Avenue  
Surrey, B.C. V3X 3A2

AND ON NOTICE TO: Laurie Cavan, General Manager  
Parks, Recreation & Culture  
The City of Surrey  
14245 – 56 Avenue  
Surrey, B.C. V3X 3A2

NOTICE AS REQUIRED BY ss. 15 and 16 of the *Judicial Review Procedure Act*, TO:

THE ATTORNEY GENERAL OF THE  
PROVINCE OF BRITISH COLUMBIA  
Ministry of the Attorney General  
1001 Douglas Street  
Victoria, B.C. V8W 9J7

Let all persons whose interests may be affected by the orders sought TAKE NOTICE that the petitioners applies to court for the relief set out in this petition.

## APPEARANCE REQUIRED

IF YOU WISH TO BE NOTIFIED of any further proceedings, YOU MUST GIVE NOTICE of your intention by filing a form entitled "appearance" in the above registry of this court within the time for appearance and YOU MUST ALSO DELIVER a copy of the "appearance" to the petitioner's address for delivery, which is set out in this petition. YOU OR YOUR SOLICITOR may file the "appearance". You may obtain a form of "appearance" at the registry. IF YOU FAIL to file the "appearance" within the proper time for appearance, the petitioner may continue this application without further notice.

## TIME FOR APPEARANCE

Where this Petition is served on a person in British Columbia, the time for appearance by that person is 7 days from the service (not including the day of service). Where this Petition is served on a person outside British Columbia, the time for appearance by that person after service is 21 days in the case of a person residing anywhere within Canada, 28 days in the case of a person residing in the United States of America, and 42 days in the case of a person residing elsewhere.

## TIME FOR RESPONSE

IF YOU WISH TO RESPOND to the application, you must, on or before the 8th day after you have entered an appearance,

- (a) deliver to the petitioner
  - (i) copies of a Response in Form 124, and
  - (ii) 2 copies of each Affidavit on which you intend to rely at the hearing, and
- (b) deliver to every other Party of record
  - (i) one copy of a Response in Form 124, and
  - (ii) one copy of each Affidavit on which you intend to rely at the hearing.

*The Address of the registry is*

The Courthouse  
800 Smithe Street  
Vancouver, B.C.

*The Address for delivery is:*

Attn: Jay N. Spiro  
BAKER & BAKER  
Barristers & Solicitors  
1708- 808 Nelson Street  
Vancouver, B.C. V6Z 2H2  
Email: [jspiرو@bakerbaker.ca](mailto:jspiرو@bakerbaker.ca)

Telephone: 604-891-0208  
Fax: 604-681-3504

*The name and office address of the Petitioner's Solicitor is:*

Jay N. Spiro, (address same as above)

## THE PETITIONERS APPLY TO THIS COURT FOR THE FOLLOWING ORDERS:

- 1) A declaration that Section 42 of the Surrey Parks, Recreation and Cultural Facilities Regulation Bylaw, 1998, No. 13480 (the "Parks Bylaw"), is void as being unconstitutional and *ultra vires* the legislative competence of the City of Surrey.
- 2) A declaration that the Respondents' application of Section 42 of Parks Bylaw, to the Petitioner, in denying the Petitioner a facility use permit for the purpose of holding private nude swims, is unconstitutional and *ultra vires* the City of Surrey.
- 3) A declaration that Section 42 of the Parks Bylaw does not prohibit the rental of municipal swimming pools for the purpose of holding private nude swim activity.
- 4) Further or in the alternative, a declaration that the decision of Laurie Cavan, General Manager of Parks, Recreation and Culture (the "General Manager") to refuse to issue and to grant the Petitioner a permit for the use of the Newton Wave Pool, under Section 73 of the Parks Bylaw is patently unreasonable;
- 5) A declaration that the General Manager's refusal to provide the Petitioner with written permission under Section 75 of the Parks Bylaw to hold private nude swims, contrary to Section 42 of the Parks Bylaw, is patently unreasonable;
- 6) An Order in the nature of mandamus that the General Manager grant the Petitioner a facility use permit for the Newton Recreation Centre (Newton Wave Pool) in order to hold private nude swims at the times and dates requested by the Petitioner, or the next available openings;
- 7) Costs; and
- 8) Such further and other relief as to this Honourable Court seems just.

## THE GROUNDS UPON WHICH THE APPLICATION BY THE PETITIONERS FOR THE ORDERS SOUGHT IS BROUGHT ARE:

### **Statutory Authority**

- 1) Section 8 of the *Community Charter*, S.B.C. 2003, c. 26 (the "Charter"), sets out the fundamental powers of a municipality. Under subsection 8(3)(b), a council may, by bylaw, regulate, prohibit and impose requirements in relation to public places.
- 2) Section 15 of the *Community Charter*, S.B.C. 2003, c. 26 (the "Charter"), provides that under its regulatory power, a municipal council may provide for a system of licences, permits or approvals including by doing one or more of the following:
  - (a) *prohibiting any activity or thing until a licence, permit or approval has been granted;*
  - (b) *providing for the granting and refusal of licences, permits and approvals;*
  - (c) *providing for the effective periods of licences, permits and approvals;*
  - (d) *establishing*

(i) terms and conditions of, or  
(ii) terms and conditions that must be met for obtaining, continuing to hold or renewing a licence, permit or approval, or providing that such terms and conditions may be imposed, the nature of the terms and conditions and who may impose them;

(e) providing for the suspension or cancellation of licences, permits and approvals for

- (i) failure to comply with a term or condition of a licence, permit or approval, or  
(ii) failure to comply with the bylaw;

- 3) Under Section 73 of the Parks Bylaw, the General Manager is authorized to issue and to grant permits for the use of parks, including swimming pool facilities.
- 4) Section 74 of the Parks Bylaw prohibits any person from holding a procession, march, drill, performance, ceremony, concert, gathering or meeting within a park without a valid permit issued by the General Manager.
- 5) Section 75 of the Parks Bylaw authorizes the General Manger to provide written permission to persons to act in a manner contrary to the provisions of the Parks Bylaw, and requires every person to act in accordance with the conditions imposed by such written permission.

#### **Section 42 of Parks Bylaw is Unconstitutional and *Ultra Vires***

- 6) Section 42 of the Parks Bylaw is unconstitutional and ultra vires the legislative competence of the City of Surrey.
- 7) Section 42 relates to “dress” at bathing beaches and swimming pools, and states:
- No person shall enter or bathe in any water at any bathing beach or in any swimming pool without being clothed in proper bathing attire.*
- 8) The pith and substance of s. 42 concerns public decency. The provision constitutes a colourable attempt by the City of Surrey to regulate morality, specifically public nudity, and thus displaces the federal jurisdiction in respect of criminal law.

#### **Denial of Permit is Unconstitutional and *Ultra Vires***

- 9) The City’s decision to deny the Petitioner a facility use permit based on s. 42 of the Parks Bylaw is unconstitutional and *ultra vires* in that the City is attempting to stiffen the existing *Criminal Code*, R.S.C. 1985, c. C-46, provisions aimed at nudity.

- 10) Section 42

*42. No person shall enter or bathe in any water at any bathing beach or in any swimming pool without being clothed in proper bathing attire.*

- 11) Section 174 of the *Criminal Code* deals with nudity, as follows:

(1) Every one who, without lawful excuse,  
(a) is nude in a public place, or

*(b) is nude and exposed to public view while on private property, whether or not the property is his own,*

*is guilty of an offence punishable on summary conviction.*

*(2) For the purposes of this section, a person is nude who is so clad as to offend against public decency or order.*

- 12) The Petitioner's proposed use of the Newton Wave Pool facility does not violate s. 174 of the *Criminal Code*, and would otherwise be permitted but for the Respondents' patently unreasonable decision.
- a) The Petitioner has requested permission to rent the Newton Wave Pool in order to host private nude swims, with participation open only to registered members of the Petitioner and their guests; therefore, participants would not be nude in a public place; and
  - b) Participants in the Petitioner's nude swims would not be exposed to public view while on private property.

### **Denial of Permit is Patently Unreasonable**

- 13) Further or in the alternative, the General Manager's decision to deny the Petitioner a facility use permit is patently unreasonable.
- a) The Newton Wave Pool facility is still available for private rentals on Friday and Saturday nights;
  - b) There are no reasonable health concerns regarding the use of the pool facilities by patrons not wearing bathing attire;
  - c) The City has a large staff of lifeguards from which to draw, many of whom are willing and able to guard during the Petitioner's swim events;
  - d) Section 42 of the Parks Bylaw does not operate to prohibit the rental of municipal swimming pools for the purpose of holding private nude swim activity. The purpose of this provision is to regulate the dress of patrons in public places (swimming pools and bathing beaches); and
  - e) The Respondents' true reason for denying the Petitioner a facility use permit is based on improper moral considerations about nudist/naturist lifestyles and activities.
- 14) Further, the General Manager's decision to not provide written permission under Section 75 of the Parks Bylaw to hold private nude swims, contrary to Section 42 of the Parks Bylaw, is patently unreasonable for the reasons listed in paragraph 13 above.

### **Respondents' Reasons for Denial were given in Bad Faith**

- 15) The Respondents' stated reasons for denying the Petitioner a facility use permit were given in bad faith, that is, the true reason behind the Respondents' decision was other than those disclosed by the General Manager.

**THE PETITIONER WILL RELY ON:**

- a) Rules 10, 51, 52, and 63 of the Supreme Court Rules;
- b) The ***Judicial Review Procedure Act***, R.S.B.C. 1996, c.241
- c) The inherent jurisdiction of the Court.

At the hearing of this petition will be read the affidavit of:

- 1) Paul Andreassen, sworn May \_\_, 2007

copies of which are served herewith.

**THE FACTS UPON WHICH THIS PETITION IS BASED ARE AS FOLLOWS:**

- 1) The Petitioner is a company incorporated under the laws of British Columbia and has its registered offices at 1321 Johnston Road, White Rock, B.C. V4B 3Z3.
- 2) The Respondent, City of Surrey, is a municipal corporation under the Local Government Act, R.S.B.C. 1996, c. 323, and has its offices at City Hall 14245 – 56<sup>th</sup> Avenue, Surrey, British Columbia V3X 3A2.
- 3) The Respondent, Laurie Cavan, is the General Manager of Parks, Recreation and Culture for the City of Surrey, and as such is ultimately responsible for the issuance of facility use permits.
- 4) Between December 2004 and May 2006, the Petitioner contacted Ms. Cavan and other City staff on numerous occasions to request pool rental opportunities at the Newton Recreation Centre in order to host monthly, private nude swims at the Newton Wave Pool for members of the Petitioner and their guests.
- 5) On June 26, 2006, Ms. Cavan responded in writing to the Petitioner's requests and indicated that she would not issue the Petitioner a rental permit, under s. 73 of the Parks Bylaw, for the use of any City of Surrey Recreational Facility, for the purpose of holding private nude swims.
- 6) Ms. Cavan also indicated that she would not grant the Petitioner written permission, under s. 75 of the Parks Bylaw, to act in a manner contrary to s. 42 of the Parks Bylaw (the "Dress" provision).
- 7) Ms. Cavan provided the following reasons for her position:

- 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.

***The Petitioner estimates that the application will take \_\_ hours.***

DATED: May \_\_, 2007

---

JAY SPIRO  
SOLICITOR FOR THE PETITIONER