



S-197639

No. _____
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN

OPTIONS COMMUNITY SERVICES SOCIETY

PLAINTIFF

AND

THE BOARD OF EDUCATION OF SCHOOL DISTRICT NO. 36
(SURREY)

DEFENDANT

NOTICE OF CIVIL CLAIM

This action has been started by the Plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must:

- (a) file a Response to Civil Claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed Response to Civil Claim on the Plaintiff.

If you intend to make a counterclaim, you or your lawyer must:

- (a) file a Response to Civil Claim in Form 2 and a Counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed Response to Civil Claim and Counterclaim on the Plaintiff and on any new parties named in the Counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the Response to Civil Claim within the time for response to civil claim described below.

Time for Response to Civil Claim

A response to civil claim must be filed and served on the Plaintiff(s):

- (a) if you were served with the Notice of Civil Claim anywhere in Canada, within 21 days after that service;
- (b) if you were served with the Notice of Civil Claim anywhere in the United States of America, within 35 days after that service;

- (c) if you were served with the Notice of Civil Claim anywhere else, within 49 days after that service; or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

PART 1: STATEMENT OF FACTS

The Parties

1. The Plaintiff, Options Community Services Society ("**Options**"), is a non-profit Society under the *Societies Act*, S.B.C. 2015, c. 18, and a registered charity, with an address for service in this proceeding at 400 - 725 Granville Street, Vancouver, British Columbia, V7Y 1G5.
2. Options primarily serves Surrey, British Columbia, and its neighbouring communities, providing a broad array of family, children and youth services, including child care resources and referral, and early childhood services, counselling, employment, mental health, homelessness and housing, and immigrant settlement and integration. Options also operates a regional crisis line, volunteer centre, and provides information and referrals.
3. Options was incorporated on April 1, 2009, as a result of an amalgamation of two well-established community service organizations: OPTIONS: Services to Communities and Surrey Community Services. Surrey Community Services had been providing services in response to the needs of Surrey residents since 1969. OPTIONS: Services to Communities had been building services in Surrey since 1971.
4. Options currently operates over 80 programs and projects, primarily in Surrey, Delta, White Rock and Langley. Options is governed by a volunteer Board of Directors, and currently employs approximately 400 people and has about 300 volunteers.
5. The purposes of Options, as described in its Constitution, are:
 - (a) to provide social services to victims and perpetrators of domestic violence and their families, such as transitional housing, counselling, support and educational resources;
 - (b) to provide family, youth, and children's services, such as parent-child counselling, drop-in services, child care services and child care referrals;

- (c) to provide mental health and addictions services to individuals and families, such as residential housing, support services, counselling, recreational opportunities, life skills training and employment services;
 - (d) to operate a 24 hour crisis line that provides telephone support, crisis intervention and resource information to emotionally distressed callers;
 - (e) to provide transportation services;
 - (f) to provide employment services;
 - (g) to provide affordable housing to low income adults and families as well as to provide referrals and outreach to individuals and families;
 - (h) to encourage community health and well-being by promoting volunteerism, providing information and referral services, training and other resources as needed;
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- (i) to provide education, counselling and other support services for refugees and Immigrants, including language instruction, employment training, job search programs, translation services and information programs on Canadian culture and life;
 - (j) to receive, acquire, hold, maintain, invest, administer, distribute, and operate all types of property, directly or indirectly, through any form of ownership or to dispose of such property to charitable organizations that are qualified donees under the Income Tax Act of Canada in furtherance of the purposes of the Society stated in paragraphs (a) to (i) above; and
 - (k) to do all such things as are incidental and ancillary to the attainment of the charitable purposes of the Society.

6. The Defendant, The Board of Education of School District No. 36 (Surrey) (the "**School District**"), is a corporation under section 65(1) of the *School Act*, R.S.B.C. 1996, c. 412.

The Partnership between Options and the School District

7. Since October 1986, Options and the School District have jointly operated the Growing Together program at Guildford Park Secondary School in Surrey, British Columbia.

8. The Growing Together program provides high quality daycare and outreach support to expectant moms and young parents in Surrey between 13 and 19 years old who would like to complete their high school education.
9. The partnership between Options and the School District over the last 33 years has been supportive and collaborative.
10. The Growing Together program has four major components: (1) Education; (2) Health; (3) Counselling; and (4) Daycare.
11. The School District provides the education component of Growing Together, including the teaching staff, school counsellor and classroom space, as well as the property for the daycare facility and maintenance of the daycare facility.
12. Options provides the child care, young parent support and other wrap-around services. The Growing Together daycare supports infants and toddlers from birth to 36 months.
13. The expertise of Options and its community partners enables Options to provide wrap-around support to the young families in the Growing Together program.
14. The wrap-around services Options provides to the young parents at Growing Together include, without limitation:
 - (a) attendance at social worker appointments with the young parents as their advocate;
 - (b) attendance at medical appointments with the young parents and their children;
 - (c) assisting the young parents with court documents around child custody and maintenance issues and attending court with them;
 - (d) assistance with college applications;
 - (e) assistance in searching for accessible housing;
 - (f) acting as an advocate for the young parents with their landlords;
 - (g) arranging for the provision of donated furniture for the young parents; and
 - (h) teaching the young parents basic cooking skills.

15. Over Growing Together's 33 years of services, Options has supported more than 1,500 young parents to build a brighter future for themselves, their children and future children. Options has done so by providing specialized support services for young parents which are integrated with quality child care for their infants and children.
16. Many of Growing Together's young parents are highly vulnerable. Some come from damaging backgrounds with a lack of support, or unhealthy relationships. Options is their support and family. Options' expertise in providing wrap-around support to these young parents, together with Options' partnerships with other community organizations and government services, is unparalleled in Surrey, if not the Province.
17. Almost all of the young parents in the Growing Together program are girls. In the past few years there have been an average of one or two boys in the program each year.
18. Every year at least 50% of the young parents are Indigenous youth. As of June 2019, eight of the 12 young parents in Growing Together are Indigenous.

19. Many of the young parents are teenagers in the care of the Province.
20. As of June 2019, eight of the 12 young parents in Growing Together have an active open file with the Ministry of Children and Family Development (the "MCFD").
21. Options has many long-standing and successful partnerships with government agencies and community organizations that offer additional layers of expertise for the Growing Together parents, including:
 - (a) Sources Community Resources Society: Options has a partnership with Sources Community Resources Society, a non-profit agency in Surrey that offers an infant development program. An expert in child development from Sources comes out to the Growing Together daycare once each month to connect with the young parents and provide them with information about infant development.
 - (b) The Star Elders: Options has connections with The Star Elders, who attend meetings at the daycare and support Indigenous clients.
 - (c) Telus: Options has a partnership with Telus. Telus assists the young students by funding costs associated with high school graduation, including hair and makeup for the graduation ceremony. Telus also contributes to Mother's Day events for the young parents. Telus speaks with the young parents about youth and

women empowerment, and works with the young parents to assist them in finding employment.

- (d) Ministry of Social Development: Options has a strong relationship with the Ministry of Social Development's Family and Youth Program. Options has an arrangement with the Ministry so that the young parents do not have to stand in line in order to receive support from Ministry staff. The Ministry of Social Development also assists the young parents in finding employment after they graduate from high school.
 - (e) BC Housing: Options has 13 subsidized rental units that Options can connect the young parents with to help them access affordable housing. A lot of the young parents live independently on youth agreements while in high school and can have difficulty accessing housing.
 - (f) Southridge School: Options has a relationship with Southridge School, a private school in Surrey. Southridge provides Christmas hampers for the young parents each year. Grade 9 students from Southridge also volunteer their time at Growing Together.
22. Options also routinely connects the young parents at Growing Together to other Options' programs that offer additional expertise and community partnerships including:
- (a) Nobody's Perfect Parenting Program, a facilitated parenting program for parents of children from birth to age five.
 - (b) Support for Parents of Young Children, which offers educational support groups and free, confidential support from a trained community counsellor.
 - (c) Healthiest Babies Possible, a program that connects pregnant and new parents to a dedicated team that includes Public Health Nurses, Registered Dietitians, Health Coaches and Nutritionists.
 - (d) Child Care Resource and Referral, which offers parenting education and assistance in finding child care.
 - (e) Transition Houses, for women and their children who have experienced abuse, threats or violence in their relationship and need a safe place to stay.

- (f) Counselling Programs, family counselling and sexual abuse counselling.
23. Options administers the health component of the Growing Together program through the Fraser Health Authority. A public health nurse from Fraser Health comes to the daycare once each week. The health nurse performs well-baby checks on the children attending the daycare and gives the children their immunizations. The health nurse also offers breastfeeding support for the young mothers. Fraser Health also provides a teeth varnishing clinic for the young parents and their children.
 24. Options also has a successful collaboration with Nurse-Family Partnership, an infant development program for women having their first baby. Nurse-Family Partnership connects with high risk young parents while pregnant and will follow them through the first two years of their child's life.
 25. From the start of Growing Together in 1986 until September 2018, the School District funded a full time counsellor who worked out of Guildford Park Secondary School and was attached to the Growing Together program. The role of the counsellor was to do the initial intake of the young parents into the Growing Together program, to assist the young parents with course selection and enrollment into classes, and to do one-on-one counseling with the young parents.
 26. Since September 2018, the School District has offered a District counsellor for young parents in the Growing Together program.

The Premises

27. As part of the partnership between Options and the School District, since October 1986 the School District has provided the property for Options' daycare facility and maintenance of the daycare facility.
28. Growing Together has always operated out of Guildford Park Secondary School, with an address of 10707 146th Street, Surrey, BC. The daycare facility has always been located on school grounds.
29. The original facility out of which Options operated the daycare and support services was a portable licenced for 24 children from newborns to 36 months.
30. Options fundraised from different donors to pay the capital costs for the portable, which was just over \$85,000.

31. Options operated the daycare and wrap-around services out of the original portable at Guildford Park Secondary School, which it owned, until 1994.
32. During this time there was no written lease agreement between Options and the School District setting out the terms upon which Options had a right to operate Growing Together on school property.
33. By 1992, the daycare facility had become too small to meet the demands of Growing Together and needed to be expanded. At the time, Guildford Park Secondary School was undergoing a major renovation which required that expansion of the daycare be relocated to a different location on the school property.
34. Over a period of approximately two years, Options looked for ways to fundraise the money to pay for a new building for the daycare.
35. In the early 1990s, the Ministry of Education and the Ministry of Women's Equality were starting to increase funding for child care in the Province. In 1994, Options and the School District jointly applied for the funding for the building out of which Options operates the Growing Together Daycare and Outreach Support Program (the "**Premises**"). The funding guidelines required that a non-profit was on the grant application.
36. Options and the School District were successful in securing \$470,000 in funding from the Province. These funds were used to pay for the capital costs for the design and construction of the new building for the daycare, which is the Premises out of which Options continues to operate the daycare today.
37. Options oversaw the design and construction of the Premises.
38. Beginning in September 1995, Options began operating Growing Together out of the Premises as a licensed child care centre for 36 infants and toddlers from birth to 36 months.
39. The Premises are an approximately 4,200 square foot modular building. The Premises have three playrooms that are each designed to create safe and developmentally appropriate spaces for the kids. The infant room is for newborns to eight months; the tweenie room is for nine to 15 months; and the toddler room is for 16 – 36 months.

40. The Premises also have three nap rooms, two bathrooms/change rooms for the children, one adult washroom, a kitchen, a staff/meeting room, one office for Options' staff, and one office for the public health nurse when she visits.
41. The Premises have a big wooden deck and a fenced-off yard with a playground.
42. Options holds a Community Care Facility Licence for the Premises which was originally issued by Fraser Health for the Growing Together Daycare on September 5, 1995 (the "**Licence**"). The Licence permits Options to operate the Growing Together Daycare at the Premises at Guildford Park Secondary School.
43. In 1995, Options and the School District entered into a written lease agreement pursuant to which Options leased the Premises from the School District for a term of five years (the "**Lease**"). The Lease provides that Options will pay to the School District annual rent in the amount of \$1.00. Options paid the School District annual rent in the amount of \$1.00 in accordance with the Lease.
44. The Lease contained an overholding provision (the "**Overholding Clause**") which provided:

If the Tenant shall continue to occupy the Premises after the expiration of this Lease without any further written agreement, there shall be no tacit renewal of this Lease or the term hereby granted, and the Tenant shall be deemed to be occupying the Premises as a tenant from month to month at a monthly rental payable on advance on the first day of each month equal to twice the monthly rentals payable by the Tenant during the last year of the term hereof.
45. In or about 2006, the School District and Options agreed to terminate the Lease.
46. In 2006, a representative of the School District told Tammy Dyer, who was employed by Options as the Program Manager of the Growing Together daycare at the time, that since Options was not paying rent for the Premises and the School District and Options were partners in Growing Together, the School District did not require Options to have a lease for the Premises.
47. In reliance on the representations of the School District, and the conduct of the School District in acting as a collaborative and supportive partner of Options in the joint operation of Growing Together, Options has continued through to today to operate its Growing Together daycare and wrap-around services out of the Premises without a written lease agreement in place.

48. Since at least 2006, the School District has not requested that Options pay any rent in connection with the Premises, in accordance with the Overholding Clause or otherwise. Since at least 2006, Options has not paid the School District any rent in connection with the Premises.
49. Since 2006, Options and the School District have continued to operate Growing Together as a collaborative, trusting and successful partnership and Options' right to occupy the Premises has been part of this partnership.
50. Options has fundraised and paid for major upgrades to the Premises. From time to time over the years as needed, Options has purchased all new appliances for the daycare, paid for the first deck repair, and purchased new blinds. The total cost of these upgrades is approximately \$20,000.
51. In 2004, Options fundraised \$21,650 for the installation of an outdoor playground for the Growing Together daycare.
52. The School District has contributed funds towards the general maintenance of the Premises and pays for most of the building expenses. School janitors clean the Premises every day. The School District also pays the property taxes associated with the Premises.

Funding of Options' Growing Together Daycare and Wrap-Around Support Services

53. Over the past 33 years, Options has raised more than \$10 million for its Growing Together daycare and wrap-around support services from various sources including contracts with the MCFD, child care subsidies, capital and operating donations, and gifts in kind.
54. The Growing Together Program components operated by Options are currently funded by the MCFD locally and provincially, the School District, BC Housing (rent subsidies) and donations.
55. Options' total annual operating budget for Growing Together is typically about \$600,000.
56. Options' projected operating budget for Growing Together for 2019/2020 has increased to approximately \$760,000 because Options was selected as one of the 53 Universal Child Care Prototype Sites in the Province.

MCFD Provincially (Child Care Subsidies)

57. When Options first began operating Growing Together, Options was solely funded by the MCFD child care subsidies and donations.
58. The young parents apply to the MCFD for the child care subsidies. Options assists the young parents with filling out their applications and submission of the applications to the MCFD. With the applications Options includes a letter from Growing Together verifying that the young parent is attending a high school education program.
59. The child care subsidy is currently \$1,500 per month for each child. Options invoices the MCFD each month, and the MCFD pays the funds to Options. Options relies on the MCFD child care subsidies to operate the daycare. Most of the funds are used to pay the wages of the staff at the daycare.
60. As further set out below, effective December 1, 2018, Options was awarded Provincial prototype funding from the MCFD. This prototype funding has now replaced Options' prior funding arrangements with the MCFD Provincially. A major advantage of the prototype funding is that the contract is for a guaranteed amount over the effective term and does not depend on actual enrollment numbers offering increased certainty to Options' operation of the daycare. The prototype funding also offers increased funding amounts over and above what Options received under the child care subsidies.

MCFD Locally

61. In or about 1990, Options began receiving additional funding from the MCFD locally.
62. The first year this funding was in place it was about \$30,000. This funding has gradually increased over the years, and Options' current funding agreement with MCFD locally is for annual funding in the amount of approximately \$148,000.
63. Options relies on the local MCFD funding to pay for the majority of the wrap-around and outreach support services for the young parents that Growing Together supports. The MCFD local funding also pays for outreach support services for young women who are not part of Growing Together.
64. The current funding agreement between the MCFD locally and Options pursuant to which the MCFD agrees to provide to Options \$148,135.94 in funding is for the term April 1, 2019 to March 31, 2020.

The School District

65. The School District did not contribute any funds towards Options' operation of Growing Together until 2007.
66. In 2007, the Provincial government decreased funding for Growing Together and Options was going to be about \$30,000 short for the year for its budget, which put its program in jeopardy.
67. Ms. Dyer approached Bob Coventry, who was the Assistant Superintendent for the School District at the time, and asked if the School District would help Options.
68. The School District agreed to provide Options with funding in the amount of \$25,000 for the 2007/2008 school year. Mr. Coventry told Ms. Dyer that the School District provided the funding because it believed in the Growing Together program.
69. This was the first time that the School District contributed any money towards Options' operating budget for Growing Together. There was no written agreement setting out the terms of the funding.
70. In 2008, the School District again provided funding to Options in the amount of \$25,000 for its operating budget for Growing Together for the 2008/2009 school year. There was no written funding agreement in place.
71. In 2009, Mr. Coventry was retiring and told Ms. Dyer that he wanted to ensure that, after his retirement, the School District continued to provide funding to Options for Growing Together. Mr. Coventry told Ms. Dyer that in order to try to secure the School District's support for the program from a financial point of view, the School District and Options should enter into a written funding agreement. Mr. Coventry also doubled the annual funding from the School District to \$50,000.
72. Based on these representations of the School District, and the conduct of the School District in its partnership with Options, in November 2009, Options signed the School District's Standard Contract for Services pursuant to which the School District agreed to provide funding to Options in the amount of \$50,000.
73. For each of the past ten years, Options and the School District have entered into the School District's Standard Contract for Services pursuant to which the School District has agreed to provide Options with annual funding in the amount of \$50,000.

74. The 2010/2011 funding agreement, and each funding agreement thereafter, commences on or about September 1 and expires on or about August 31.
75. Since the School District began providing funding to Options, Options has had sole control and discretion over its use of the funds.
76. The School District has automatically renewed the \$50,000 in funding to Options each year, without any discussion or negotiation. Options has not been required to report to the School District on its use of the \$50,000.
77. The funding agreement between the School District and Options currently in effect commenced on September 1, 2018 and expires on August 31, 2019 (the "**2018/2019 School District Funding Agreement**").
78. None of the funding agreements between Options and the School District have addressed the larger partnership between Options and the School District with respect to their joint operation of the Growing Together program, or Options' right of use and occupation of the Premises.

Provincial Prototype Funding

79. As part of the Province's initiative to reduce child care fees, the Province is funding a limited number of existing licenced child care providers in BC as prototype sites for the introduction of universal child care. The program offers parents reduced-cost child care spaces regardless of their income. The learning from the program is intended to inform the development of a universal child care model in BC.
80. The program involves the Province providing funding directly to the child care providers in an amount that covers the majority of operating costs of the daycare.
81. In July 2018, Options applied to be one of the 53 Universal Child Care Prototype Sites in the Province.
82. There were over 300 applications for prototype funding, and Options was one of the 53 daycare sites chosen.
83. Options signed a funding agreement with the MCFD for the prototype funding in mid-November 2018 and Options was publicly announced as a prototype site in early December 2018.

84. Options' prototype funding agreement with the MCFD is effective from December 1, 2018 to March 31, 2020.
85. The prototype funding has enabled Options to hire more staff for the daycare and extend the daycare hours to offer more support to the young families.
86. Options' success in securing the prototype funding has enabled the young parents to stay with Options for their child care after they graduate from high school as long as their child is under the age of three.
87. The prototype funding has also enabled the enrollment of more community families in the Growing Together daycare, which strengthens the viability of the Growing Together program for the students in the program.
88. The payments by the MCFD to Options under the prototype funding agreement over the effective term of 15 months total \$733,313.83.

Recent Events with the School District

89. In 2017, Growing Together's enrollment of young parents registering for the program was dropping, and Options for the first time started the school year with less than 20 students. In prior years there have consistently been between 27 and 30 students in the Growing Together Program.
90. As a result of this lower enrollment, Options laid off two full-time staff at the Growing Together daycare.
91. In 2017, Options registered two community families in Growing Together in order to prevent additional staff layoffs, ensuring consistency for the young parents and their children in the program.
92. Community families are parents who do not attend Guildford Park Secondary School. Options has had community family enrollment in the Growing Together daycare since November 2015.
93. In September 2018, Options learned that the School District changed the delivery model of the Growing Together classroom to a four day per week instruction model, down from five. Enrollment in the Growing Together Program for the 2018/2019 school year dropped to 14 students.

94. Ms. Dyer, Deputy Executive Director at Options, had discussions with the Principal of Guildford Park Secondary School, Brian Tait, and the Principal of Alternative Education for the School District, Daniel To, to inform them that Options needed to increase enrollment with community families to keep the program open for the young parents that needed it.
95. Mr. Tait and Mr. To told Ms. Dyer that they thought that increasing community enrollment in the daycare was a good idea. Mr. To said that it was good to be able to continue to support Growing Together's young parents with daycare after they graduate from high school.
96. The prototype funding has enabled the Growing Together daycare to enroll more community families. As of April 2019, Options had 13 community families at the daycare, strengthening the viability of the program for the young parents in the Growing Together program.
97. In December 2018, Ms. Dyer informed Mr. Tait and Mr. To about Options being awarded the prototype funding. Although Options learned it was a successful applicant for the prototype funding before December 2018, Options signed a non-disclosure agreement with the Province and was not permitted to share this information with anyone, including the School District, until the Premier made the announcement in early December 2018.
98. In early February 2019, Options became aware that senior management at the School District were displeased because they did not know about Options' success in being awarded the prototype funding.
99. Since February 2019, Options has repeatedly tried to engage the School District in discussions about Options' operation of Growing Together and the Province's Universal Child Care Prototype.
100. Senior management at the School District remain displeased with Options' success in being awarded the prototype funding, but the basis of the School District's disapproval remains unclear to Options. Initially the School District expressed concern about capacity issues, eliminating portables and said that classroom space needed to take priority over daycares. Then the School District expressed concern about being embarrassed that the senior administrators at the School District were not aware of the prototype funding until so late. At one point, the School District accused Options of being

in breach of its 2018/2019 School District Funding Agreement by accepting the prototype funding.

101. Options has repeatedly tried to work with the School District to address its concerns, but the School District has refused to engage in any meaningful dialogue.
102. On April 30, 2019, the School District advised Options that the School District did not intend to renew its annual funding agreement with Options that expires on August 31, 2019.

The Notice of Termination

103. On May 29, 2019, the School District delivered a letter to Options that states that the School District is terminating Options' month-to-month tenancy at Guildford Park Secondary School effective August 31, 2019, and demands vacant possession of the Premises on August 31, 2019 (the "**Notice of Termination**").
104. The Notice of Termination is the first time that the School District has expressed to Options, either verbally or in writing, that Options is occupying the Premises under a month-to-month tenancy.
105. The position of the School District that Options has a month-to-month lease is wholly inconsistent with the relationship between Options and the School District and the partnership through which the parties have successfully operated Growing Together for decades. Over the last 33 years, Options and the School Districted have jointly operated Growing Together as a collaborative, supportive partnership.
106. Options' right to occupy the Premises is part of this larger partnership between Options and the School District pursuant to which Options and the School District jointly operate Growing Together.
107. A month-to-month tenancy is inconsistent with Options' operation of Growing Together, including Options' licensing requirements for the daycare and the nature of the services Options provides to the young parents and their children.
108. Options' Community Care Facility Licence with Fraser Health for the Growing Together Daycare is a facility licence issued for the Premises. The Licence, originally issued by Fraser Health to Options on September 5, 1995, permits Options to operate the Growing Together Daycare at the Premises at Guildford Park Secondary School.

109. Options cannot transfer the Licence to a new facility at a different location. If Options relocates the Growing Together Daycare, Options is required to apply for a new facility licence. As set out below, once a new facility is secured and renovated to comply with licensing requirements, the licensing process will take a minimum of three to six months. It would be inconsistent with these known licensing restrictions for Options to agree to a month-to-month tenancy for its daycare.
110. The nature of the services that Options provides to the young parents and their children is also inconsistent with a month-to-month tenancy. Options' Growing Together program operates on an annual basis in accordance with the school year. The young parents rely on Options' daycare and support services to be there for the full year. A month-to-month lease would be inconsistent with Options' commitment to its clients and the trust upon which Options builds its relationships with the young parents.
111. It is extremely difficult to find reliable, affordable, quality daycare in Surrey. A month-to-month tenancy would be wholly inconsistent with the amount of time Options' clients would require to find suitable, alternate daycare.
112. A month-to-month tenancy is also inconsistent with Options' funding agreements with both the MCFD and the School District itself. Pursuant to these funding agreements, Options agrees to provide services to the young parents and children at Growing Together on an annual basis.
113. As set out above, the MCFD local funding contracts have been in place each year since about 1990 and have an effective term that runs from the beginning of April to the end of March. The School District funding contracts have been in place each year since 2009 and have an effective term that runs from the beginning of September to the end of August. A month-to-month tenancy would not provide Options with security to know that it could meet its obligations under either of these contracts.
114. On June 20, 2019, Options sent a letter to the Members of the Surrey School Board providing notice to the School District that Options disputes the validity of the Notice of Termination and asserting Options' right to continue to occupy the Premises until at least August 31, 2020.

Harm if Options is Required to Vacate the Premises by August 31, 2019

115. If Options is required to vacate the Premises by August 31, 2019, it will harm Options, Options' employees, the young parents and community parents who Options serves, and their children.
116. Since April 30, 2019, Options has been trying to find a new location out of which it can continue to operate its Growing Together daycare and provide its wrap-around support services. Options has not yet secured a new location for Growing Together.
117. Once Options secures a new site, Options will need to either renovate the site to comply with licensing requirements or begin construction of a new building. Options will also need to have a new facility licence issued by Fraser Health for the daycare at the new site before Options can begin operating. The licensing process will take a minimum of between three and six months.
118. Once new premises are secured, Options will require between eight to 12 months for renovations or construction and licensing. Therefore, if Options is required to vacate the Premises by August 31, 2019, at a minimum, there will be an interruption in Options' provision of its Growing Together daycare and wrap-around services of between eight to 12 months.
119. If there is an interruption in Options' ability to provide daycare and wrap-around support services, Options will be in breach of its prototype funding agreement with the MCFD Provincially and lose its prototype funding.
120. For decades, Options has worked hard to build a strong relationship, and reliable reputation, with the MCFD. Options relies on MCFD funding to operate not just Growing Together, but also other Options' programs that serve the Surrey community. If Options breaches its funding agreement with the MCFD, this is damaging to Options' reputation with the MCFD, and also damaging to Options' reputation in the broader community with other funders and donors. This will impact Options' ability to fundraise and continue to serve the community.
121. The prototype funding is how Options pays the wages of its daycare employees. If Options loses its prototype funding, it will no longer be able to employ its eight Early Childhood Educators, part-time cook, and administrative assistant. Options will lose

these long-term employees, and there is no guarantee that they will be available for Options to re-hire when Options' Growing Together daycare is in operation again.

122. If there is an interruption in Options' ability to provide daycare and wrap-around services, this will also negatively impact the young parents and community parents who Options serves, and their children.
123. Of the 12 young parents in Growing Together program this past year, five are still in high school in 2019/2020 and are relying on Options to continue to provide daycare and wrap-around services next year. In addition, Options has four new young parent families who are enrolled in Growing Together for September 2019.
124. Four of Options' seven young parents in its Growing Together program this past year who graduated from high school in June 2019 are registered with Options for daycare for 2019/2020 while the young parents attend post-secondary education or work. In total Options has 13 community families (including the four former Growing Together students) who are currently registered for the Growing Together daycare this Summer and through 2019/2020. If Options is required to vacate the Premises by August 31, 2019, the majority of these families will not be able to find affordable quality child care for their children by September 2019.
125. As set out below, on June 5, 2019, the School District issued a Request for Expressions of Interest seeking a service provider for daycare and supplemental support services at Guildford Park Secondary School. Even if the School District manages to find a new service provider to provide daycare and support services at Guildford Park Secondary School for September 1, 2019, and the service provider manages to have licensing in place with Fraser Health to operate a daycare effective September 1, 2019, there will still be harm to the young parents and their children.
126. The young parents who Growing Together supports have access to Options' expertise, as well as the expertise of all of Options' government agency and community organization partners. If there is an interruption in Options' provision of wrap-around support, the expertise of Options, and Options' partners, will not be available to the young parents.
127. If there is an interruption in Options' ability to provide daycare and wrap-around support, there will be confusion and barriers to accessing services for the young parents. Instead

of having one contact, the youth will have up to three or four contacts depending on their needs. The trauma of having to repeat your story to different support workers creates barriers and increases the chance of a youth slipping through the cracks and takes longer for the youth to build a trusting relationship. Wrap-around case management is crucial to a young family's success.

128. Options' relationship with its young parents is built on trust. If there is an interruption in Options' ability to provide daycare and wrap-around services, Options is breaking its commitment to its young parents and eroding the trust that Options has built over the years. Even a brief interruption in service is harmful to the young parents. The young parents need consistent, reliable support.

The School District's Request for Expressions of Interest

129. On June 5, 2019, the School District issued a Request for Expressions of Interest seeking: "a Service Provider for the daycare and supplemental support services components of the district's Growing Together Program located at Guildford Park Secondary School" (the "REOI").
130. In the REOI the School District communicates an intention to provide daycare and supplemental support services at Guildford Park Secondary School using the name "Growing Together".
131. For 33 years, Options has used the name "Growing Together" in connection with child care services and support services for expectant and young parents. In the community, Growing Together is known as an Options' program, run in partnership with the School District, which provides the education component. The Growing Together trademark, in connection with child care and support services, is part of Options' brand.
132. On June 14, 2019, Options filed an application to register the trademark "Growing Together" in connection with child care services and support services for expectant and young parents.
133. Options has established a reputation and goodwill in the "Growing Together" name in connection with child care services and support services for expectant and young parents.

134. The School District's unauthorized use of Options' goodwill, and Options' loss of control over its goodwill, has caused and will continue to cause damage to Options.

PART 2: RELIEF SOUGHT

1. Options seeks the following relief:
 - (a) an interlocutory injunction restraining the School District from acting on the Notice of Termination;
 - (b) an interlocutory injunction requiring the School District to cease use of the name "Growing Together" in connection with child care services and support services for expectant and young parents;
 - (c) a declaration that Options has a contractual licence to use and occupy the Premises arising out of and as part of the relationship between Options and the School District;
 - (d) a declaration that Options' licence of occupation is not revoked by the Notice of Termination and is terminable only by mutual agreement between Options and the School Board or by either party acting in good faith and on reasonable notice, the length of which is to be determined by the Court;
 - (e) in the alternative, a declaration that the School District is estopped from relying upon its legal rights in the Overholding Clause;
 - (f) general, special and punitive damages;
 - (g) interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 79;
 - (h) costs; and
 - (i) such further and other relief as this Honourable Court deems just.

PART 3: LEGAL BASIS

Licence of Occupation

1. For the last 33 years, the School District and Options have operated Growing Together as partners or, in the alternative, joint venturers.

2. The terms of the partnership or joint venture, explicit and/or implicit, written and/or oral, include, *inter alia*, Options' contractual licence to use and occupy the Premise for the purpose of delivering Options' Growing Together daycare and wrap-around support services.
3. Options contributed to funding the capital costs for the design and construction of the Premises; funded improvements to the Premises; raised over \$10 million for the Growing Together program; and contributed its own expertise, as well as the expertise of its community partners.
4. As a result of the long and mutually reliant relationship between Options and the School District during which the School District has allowed Options to occupy the Premises and contribute, financially and otherwise, to the Premises and the Growing Together program, Options has a contractual licence to occupy the Premises.
5. Options' licence to use and occupy the Premises is only terminable upon mutual consent or upon reasonable notice by a party acting in good faith.
6. The School District failed to provide Options with reasonable notice that it was terminating Options' licence of occupation.
7. The School District failed to act in good faith in its purported termination of Options' licence of occupation.
8. The School District breached the partnership or joint venture carried on by the parties, and Options' rights under its licence of occupation, by, *inter alia*, delivery of the Notice of Termination. Options' licence of occupation is not revoked by the Notice of Termination.

The Lease

9. In or about 2006 the parties agreed to terminate the Lease, and the Lease is no longer of any legal effect.
10. In the alternative, if the Lease was not terminated (which Options does not admit and expressly denies), based on the representations and conduct of the School District, including without limitation the statements of the School District in 2006 and the conduct of the School District throughout its partnership with Options, the School District is estopped from relying on its strict legal rights in the Lease. In particular, and without limitation, the School District is estopped from relying on strict enforcement of its legal

rights in the Overholding Clause, and from asserting that Options is occupying the Premises pursuant to a month-to-month tenancy.

Passing-Off

11. Options has established a reputation and goodwill in the "Growing Together" trademark in connection with child care services and support services for expectant and young parents.
12. The School District's conduct, including without limitation its publication of the REOI, constitutes the tort of passing-off.

Harm and Damages

13. As a result of the School District's unlawful conduct, Options has and will continue to suffer harm and damages, including irreparable harm, as particularized above.
14. Options relies on s. 39 of the *Law and Equity Act*, R.S.B.C. 1996, c. 253, Rule 10-4 of the *Supreme Court Civil Rules*, and the inherent jurisdiction of this Honourable Court.

Plaintiff's address for service:

Miller Thomson LLP
Barristers & Solicitors
Pacific Centre
400 - 725 Granville Street
Vancouver, BC V7Y 1G5
Attention: Chantelle Rajotte

Fax number address for service (if any)

604.643.1200

E-mail address for service (if any)

crajotte@millerthomson.com

Place of trial:

Vancouver, British Columbia

The address of the registry is:

Law Courts
800 Smithe Street
Vancouver, BC V6Z 2E1

Date: July 9, 2019



Signature of Lawyer for the Plaintiff
Chantelle Rajotte

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

PART 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Action seeking injunctive and declaratory relief in respect of a licence of occupation. Tort of passing-off.

PART 2: THIS CLAIM ARISES FROM THE FOLLOWING:

*[Put an "x" in **one** box below for the case type that best describes this case.]*

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

PART 3: THIS CLAIM INVOLVES:

[Put an "x" in all boxes below that apply to this case.]

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

PART 4:

Law and Equity Act, R.S.B.C. 1996, c. 253.