File No.

THE QUEEN'S BENCH
Winnipeg Centre

BETWEEN:

HENYA RACHELL OLFMAN

Plaintiff,

- and -

THE UNIVERSITY OF MANITOBA and
THE PROVINCE OF MANITOBA

Defendants.

STATEMENT OF CLAIM

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Queen's Bench Rules, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, WITHIN 20 DAYS after this statement of claim is served on you, if you are served in Manitoba.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is 40 days. If you are served outside Canada and the United States of America, the period is 60 days.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

Date: Issued by:_____
Deputy Registrar
Address of Court Office:
408 York Avenue
Winnipeg, Manitoba, R3C 0P9

TO: THE UNIVERSITY OF MANITOBA
Winnipeg MB R3T 2N2

AND TO: THE PROVINCE OF MANITOBA
Legislative Bldg., Winnipeg MB R3C 0V8

Everything above this box is part of the filed statement of claim.

The bellow comments in this box, were inserted by Shawn David Olfman on February 25, 2015, and are not part of the statement of claim, they were inserted here to explain one of the formal aspects of writing a statement of claim

In the “plaintiff claims” portion of the statement of claim, paragraphs 1 (a), (b), (c), (d), (e), (f), (g), (j), (m), (n), (o), (p), (q), (r), (s), (t), (u), (v), (w), (x), (y), (z), (aa) and (ab), are all seeking declarations from the court that would protect the Constitutional Rights, Civil Rights and Human Rights of all Canadians. Some of those paragraphs specifically refer to Henya, because by the Court’s Rules that is how they must be pleaded as Henya is the plaintiff, however, if they are granted to Henya then they also apply to all Canadians.

The requested declarations 1 (e), (f), (g), (j), (k), (l), (m), (n), (o), and (p), which refer to specific time periods, if granted by the court, would have also applied to future time periods and to publications of all faculties, protecting all Canadians.

Everything below this box is part of the filed statement of claim.

CLAIM

1. The plaintiff claims:

(a) a declaration that at least as early as August 30, 1971, pursuant to the ***Trade-marks Act***, R.S., c. T-10, s. 1, the University of Manitoba (hereinafter referred to as the "U of M") declared that it was not a private institution, and that it was a public authority which was controlled to a significant degree by the Province of Manitoba (hereinafter referred to as "MB");

(b) a declaration that pursuant to section 22 of the ***Manitoba Act, 1870***, at all times since the creation of the U of M by MB, the U of M's admissions criteria, standards, formulae, practices and actions, have been both for itself and for and on behalf of MB;

(c) a declaration that at least from 2000, and continuously up to the time of the filing of this statement of claim, the U of M and MB have been partners in the Faculty of Medicine that is run out of the U of M;

(d) a declaration that the *Canadian Charter of Rights and Freedoms* applies to all of the Faculty of Medicine's admissions rules, regulations, criteria, actions, formulae, committees, groups, personnel, interviewers, interviews, decisions, determinations, and admissions;

(e) a declaration that from and after the earliest of the dates on which the U of M first published and distributed its: *"University of Manitoba Admissions Handbook 2005"*, or its "*University 1 STARTbook, 2005 – 2006, A Companion Guide to the Undergraduate Calendar*

and Registration Guide" (both of which are collectively hereinafter referred to as the "2005-2006 Admissions Material"), until the U of M cancelled said publications, in 2005, through said publications, the U of M and MB continued to offer contracts to prospective first year university students for an offer of admission to the Faculty of Medicine between the years 2008 and 2010;

(f) a declaration that in about July of 2005, the plaintiff, Henya Rachell Olfman ("Ms. Olfman") accepted the U of M's and MB's offer, aforesaid in paragraph 1(e) above, by enrolling in and beginning to pay for the required U of M courses; and thereby at that time a contract ("The 2005 Contract"), was created between the U of M and MB and Ms. Olfman;

(g) a declaration that in 2006, through the *"University of Manitoba Undergraduate Calendar and Registration Guide for the Academic Year 2006 – 2007"*, the U of M and MB offered to affirm The 2005 Contract and to extend the date by which Ms. Olfman could apply to the Faculty of Medicine under The 2005 Contract, to the end of the Faculty of Medicine's application deadline for the Faculty of Medicine's 2011 first year class, and that by no later than the middle of September 2006 Ms. Olfman accepted same;

(h) a declaration that there is NO academic dispute between the U of M and MB and Ms. Olfman, as all parties agree that the academic components of the Faculty of Medicine's admissions criteria are the applicant's Adjusted Grade Point Average ("AGPA") and Medical College Admissions Test ("MCAT") score, and all parties are in agreement that Ms. Olfman's AGPA was 4.12 and her MCAT score (as calculated by the Faculty of Medicine) was 10.8, and

that Ms. Olfman's combined AGPA and MCAT were higher than approximately 66% of the regular Manitoba resident applicants who were admitted to the first year class in 2010;

(i) a declaration that Ms. Olfman was a regular Manitoba resident applicant, and that based on the admissions score formula set out in the 2005-2006 Admissions Material, out of all of the regular Manitoba resident applicants for the Faculty of Medicine's 2010 first year class, Ms. Olfman's admissions score was approximately in the top third of the regular Manitoba resident applicants whom the U of M admitted to its Faculty of Medicine's 2010 first year class, and that Ms. Olfman completed all of her contractual requirements under The 2005 Contract to entitle her to be offered a position as a first year student in the Faculty of Medicine; and the U of M and MB breached The 2005 Contract by not having offered Ms. Olfman a position as a first year student in the Faculty of Medicine; and that the U of M and MB must fulfill their contractual obligations to Ms. Olfman and offer her a position as a first year student in the Faculty of Medicine, and compensate her for her financial loss due to the aforesaid breach of contract;

(j) a declaration that in 2009, from and after the date in 2009 on which the U of M first published and distributed its 2009 U of M *"READ ME FIRST – FACULTY OF MEDICINE Admissions Information"* guide and its "U of M *FACULTY OF MEDICINE Application Information bulletin 2010 – 2011 Session"* (both of which are collectively hereinafter referred to as the "2010 - 2011 Medicine Admissions Material"), until the U of M cancelled said publications, in 2009, through said publications the U of M and MB continued to offer contracts to applicants to the Faculty of Medicine for an offer of admission to the Faculty of Medicine;

(k) a declaration that on or about October 5, 2009 Ms. Olfman accepted the contract offer referred to in paragraph 1(j) by completing and submitting the application form and paying the $95.00 application fee, and the 2009 Contract was created between the U of M and MB and Ms. Olfman;

(l) a declaration that Ms. Olfman was a regular MB resident applicant, and that based on the admissions score formula set out in the 2010 - 2011 Medicine Admissions Material, out of all of the regular MB resident applicants for the Faculty of Medicine's 2010 first year class, Ms. Olfman's admissions score was approximately in the top third of the regular MB resident applicants who were admitted to the Faculty of Medicine's 2010 first year class and that Ms. Olfman completed all of her contractual requirements under The 2009 Contract to entitle her to be offered a position as a first year student in the Faculty of Medicine; and the U of M and MB breached The 2009 Contract by not having offered Ms. Olfman a position as a first year student in the Faculty of Medicine; and that the U of M and MB must fulfill their contractual obligations to Ms. Olfman and offer her a position as a first year student in the Faculty of Medicine, and compensate her for her financial loss due to the aforesaid breach of contract;

(m) a declaration that in 2005 the U of M and MB undertook a fiduciary duty and/or a private law duty of care to Ms. Olfman, who was then a minor (ie. under the age of 18), when the U of M distributed its aforesaid 2005-2006 Admissions Material to her, to not change the stated Faculty of Medicine admissions score formula and not change how said admissions score is used to determine admission offers, within the expected time period within which Ms. Olfman might be completing all of the pre-med requirements listed in the 2005-2006 Admissions Material, and

applying to the Faculty of Medicine and completing the admissions process, which was at least until the end of the admissions process for the Faculty of Medicine's 2010 first year class; and that the U of M and MB breached aforesaid fiduciary duty and/or a private law duty of care, and must restore Ms. Olfman to the position she would have been in if they had not breached aforesaid duty, and compensate Ms. Olfman for that portion of her loss which cannot be restored.

(n) a declaration that because, based on the 2005-2006 Admissions Material, Ms. Olfman enrolled in specific pre-med courses at the U of M, as regards Ms. Olfman, at least until the end of the admission process for the Faculty of Medicine's 2010 first year class, the U of M and MB were estopped from changing the Faculty of Medicine admissions score formula and from changing how the admissions scoring was used to determine admissions, from that which was stated in the 2005-2006 Admissions Material;

(o) a declaration that because in 2009 Ms. Olfman applied to the Faculty of Medicine, paid the Faculty of Medicine its application fee, and went to the time and effort of supplying the required information to the Faculty of Medicine, the U of M and MB undertook a fiduciary duty and/or a private law duty of care to Ms. Olfman, to not change its admissions score formula and not change how the admissions score is used to determine admission offers, from that stated in the 2010 – 2011 Medicine Admissions Material, prior to the end of the admissions process for the first year class that began in 2010; and that the U of M and MB breached aforesaid fiduciary duty and/or a private law duty of care to Ms. Olfman, and must restore Ms. Olfman to the position she would have been in if they had not breached aforesaid duty, and compensate Ms. Olfman for that portion of her loss which cannot be restored.

(p) a declaration that based on the 2010 - 2011 Medicine Admissions Material, as regards Ms. Olfman, until the end of the admission process for the Faculty of Medicine's 2010 first year class, the U of M and MB were estopped from changing the Faculty of Medicine's stated admissions score formula and from changing how the admissions scoring was used to determine admissions, from that stated in aforesaid 2010 - 2011 Medicine Admissions Material;

(q) a declaration that the Multi Mini Interview ("MMI") as conducted by the Faculty of Medicine in the admissions process in question was NOT valid and Ms. Olfman's application to the Faculty of Medicine must be determined by the court as if said MMI had not taken place;

(r) a declaration that the MMI as conducted by the Faculty of Medicine in the admissions process in question was illegal and Ms. Olfman's application to the Faculty of Medicine must be determined by the court as if said MMI had not taken place;

(s) a declaration that the Rurality Co-efficient used by the Faculty of Medicine in the admissions process in question was not valid as it was incapable of producing the results which it was claimed said Rurality Co-efficient could produce and Ms. Olfman's application to the Faculty of Medicine must be determined by the court as if said Rurality Co-efficient had not existed;

(t) a declaration that the Rurality Co-efficient used by the Faculty of Medicine in the admissions process in question was illegal and Ms. Olfman's application to the Faculty of Medicine must be determined by the court as if said Rurality Co-efficient had not existed;

(u) a declaration that pursuant to the principals of natural justice and the *Canadian Charter of Rights and Freedoms* the U of M must disclose to Ms. Olfman:

(i) for each MMI Interviewer that interviewed her: (a) their name, (b) their qualifications at the time in question for being an MMI Interviewer, (c) the MMI question they graded her on, (d) their qualifications at the time in question in the area of the MMI question they graded her on, (e) in their arriving at the score they gave to Ms. Olfman, what points they gave Ms. Olfman and why, and what points they subtracted from Ms. Olfman and why, (f) the grading guide they used when scoring Ms. Olfman, and (g) what Ms. Olfman would have had to include in her answer for them to have given her a score of 100% or to have given her the highest score they would give if they would not give a score of 100%;

(ii) for each member of the Faculty of Medicine's Admissions Committee: (a) their name, (b) their position in the Faculty of Medicine or other reason they were on the admissions committee, (c) the conclusion they came to on whether or not to admit Ms. Olfman, and why they came to that conclusion;

(ii) the specific formula used to determine Ms. Olfman's overall score used by the Faculty of Medicine to determine whether or not to admit her;

(iii) for each applicant that was admitted in the regular Manitoba residents category instead of Ms. Olfman, the specific formula used to determine that applicant's overall score used by the Faculty of Medicine to determine whether or not to admit that applicant.

(v) a declaration that pursuant to the dicta of the Supreme Court of Canada in

Rocket v. Royal College of Dental Surgeons of Ontario, [1990] 2 S.C.R. 232, it is MB's responsibility to enact legislation that embodies appropriate safeguards to comply with the *Canadian Charter of Rights and Freedoms*;

(w) a declaration that through *The University of Manitoba Act*, C.C.S.M. c. U60, MB authorized, and continues to authorize the U of M to, on behalf of and for MB, use some of MB's constitutional authority to make laws or the equivalent of laws regarding education, and MB was negligent in not amending *The University of Manitoba Act* to require the U of M to follow the *Canadian Charter of Rights and Freedoms* in all of its admissions formulae, practices, rules, requirements, tests, factors, interviews, and means, and that it was foreseeable by MB that harm to persons, including Ms. Olfman, intending to become or to continue as students of the U of M could result from MB's aforesaid negligence;

(x) a declaration that harm was done to Ms. Olfman by the negligence of MB in not ensuring that admissions to the Faculty of Medicine were determined in keeping with all of the provisions of the *Canadian Charter of Rights and Freedoms*;

(y) a declaration that harm was done to Ms. Olfman by MB breaching or failing to follow *The Advanced Education Administration Act*, C.C.S.M. c A6.3, including failing to follow sub-sections 2 (1) (a) to (d) of said act;

(z) a declaration that pursuant to section 52(1) of the *Constitution Act, 1982*, sub-sections

34(1)(c), (d), (e), (f), (g), (h), and/or (s) of *The University of Manitoba Act* are invalid as they permit the U of M to make, and the U of M has so made, laws or the equivalent of laws in relation to education, which are inconsistent with the provisions of the *Constitution Act, 1982*;

(aa) a declaration that the U of M is bound by its own published *Respectful Work and Learning Environment* statements, and its own published *Policy on Human Rights*, and the denial of an offer of admission to Ms. Olfman, to the Faculty of Medicine, was in violation of aforesaid documents, and Ms. Olfman would have been admitted to the Faculty of Medicine had the U of M not violated its aforesaid documents, therefore, the U of M must offer admission to Ms. Olfman to the Faculty of Medicine and compensate Ms. Olfman for all loses said offer of admission cannot compensate for;

(ab) a declaration that the U of M and MB are bound by the *Canadian Charter of Rights and Freedoms*, and the denial of an offer of admission to Ms. Olfman, to the Faculty of Medicine, was in violation of aforesaid *Charter*, and Ms. Olfman would have been admitted to the Faculty of Medicine had the U of M and MB not violated aforesaid *Charter*, therefore, the U of M must offer admission to Ms. Olfman to the Faculty of Medicine and the U of M and MB must compensate Ms. Olfman for all loses said offer of admission cannot compensate for;

(ac) a declaration that Ms. Olfman suffered great emotional distress, depression, hardship, loss of esteem in the eyes of her friends, co-workers and supervisors, diminution of her ability to enjoy life, great stress, and extra work, because of the illegal actions and contractual breaches of the U of M and MB, for which they are responsible to compensate her;

(ad) a Writ of Certiorari declaring that Ms. Olfman obtained a sufficiently high admissions score to entitle her to be offered a position as a first year student in the Faculty of Medicine;

(ae) a Writ of Mandamus commanding the U of M to offer Ms. Olfman a position as a first year medical student in the Faculty of Medicine;

(af) General Damages against the U of M and MB for the great emotional distress, depression, hardship, loss of esteem in the eyes of her friends, co-workers and supervisors, diminution of her ability to enjoy life, great stress, and extra work caused to the plaintiff by the defendants from and after June, 2010;

(ag) Special Damages against the U of M and MB in an amount equal to the difference in weekly earnings between the plaintiff's employment income and the average income of an MB doctor, multiplied by the number of weeks from and including the first week of September, 2010 up to the beginning of the earliest week in which Ms. Olfman could begin taking classes at the Faculty of Medicine as a first year medical student pursuant to an offer to Ms. Olfman of a position as a first year student in the Faculty of Medicine;

(ah) punitive damages against the U of M and MB for their willful and deliberate refusal to correct their illegal actions and contractual breaches, which they knew of at least from and after the U of M Senate hearing of September 16, 2010.

(ai) Costs and pre and post-judgment interest, and

(aj) Such further and other relief as this Honourable Court deems just.

2. The plaintiff ("Ms. Olfman") is a level II life-guard and swimming instructor at Pan Am Pool, and lives in the city of Winnipeg, Manitoba.

3. The defendant, The University of Manitoba ("U of M"), is a body corporate pursuant to *The University of Manitoba Act*, C.C.S.M. c. U60.

4. The defendant, The Province of Manitoba ("MB"), is one of the provinces of Canada, created by and subject to the *Manitoba Act of 1870*.

5. Herein the "Faculty of Medicine" refers to the Faculty of Medicine which is run out of the U of M.

6. As early as August 30, 1971, by the U of M filing official mark application 0900550 under subparagraph 9(1)(n)(iii) of the *Trade-marks Act*, the U of M stated to the Trademarks Office of the Federal Government of Canada, that it (ie. the U of M) was not a private institution, and that it was a public authority which was controlled to a significant degree by MB.

7. Section 22 of the ***Manitoba Act, 1870***, 33 Victoria, c 3 (Canada) gives MB the exclusive right to, for MB, make laws in relation to education, and requires MB to make sufficient laws to govern the providing of education in MB, including governing what types of education will be provided and who will be entitled to receive that education. Aforesaid exclusive right may not

be given away by MB to other entities. No entity that is not MB may make a law or the equivalent of a law regarding education in MB, except with the permission of MB, and for and on behalf of MB. All laws and the equivalents of laws made regarding education in MB, including regarding the different types of education that will be provided and who is entitled to receive the different types of education provided in MB, that were not made by MB, were made for and on behalf of MB, by whosoever made them, in whatever form they took. The Faculty of Medicine's admissions formula, practices and admissions decision in question, was either made by MB, made in collaboration with MB, or made for and on behalf of MB.

8. At the end of January 2013, Ms. Olfman first became aware that since at least as early as 2000 MB has been working together with the U of M in controlling and running the Faculty of Medicine. Prior to the end of January, 2013, the plaintiff was not aware of the information in the News Releases on the Province of Manitoba's website. It was only in January, 2013 that the legal assistant to the plaintiff's attorney discovered the News Release sections of MB's website. At the end of January, 2013 and thereafter the plaintiff and her attorney were advised by the attorney's legal assistant of the information in MB's website's News Releases, including the following quotes from MB's website's News Releases:

From Manitoba Provincial Government News Release of June 3, 2004:

> "The Medical Student/Resident Financial Assistance Program is one component of MANITOBA'S comprehensive strategy to train …doctors."
>
> "Today's announcement (from the MB provincial government) builds on the province's comprehensive physician … training… strategy. Key elements of this ongoing (Manitoba government strategy) include… expanding medical school training spaces, providing grants to medical students…"

From Manitoba Provincial Government News Release of November 8, 2005:

> "Provincial Health Minister Time Sale announced:
> MANITOBA has added eight more medical student spaces in 2005 and will be adding seven more in 2006…THE GOVERNMENT will also be adding places for enhanced training for International Medical Graduates to 15 seats in 2005 and will increase the number to 25 in 2006."
>
> "Since 1998 we (the Manitoba Government) have increased the number of doctors in training by over 20 percent and we (the Manitoba Government) have seen results with more than 200 more doctors practicing in Manitoba…. Expanding the number of doctors… is an important part of MANITOBA'S …wait-list reduction strategy, said Sale."
>
> "THE GOVERNMENT'S provincial recruitment strategy includes expanded enrollment at the University of Manitoba medical school."

Manitoba Provincial Government News Release of August 23, 2006:

> "Since 2001 THE GOVERNMENT OF MANITOBA AND THE FACULTY OF MEDICINE HAVE BEEN WORKING TOGETHER to increase the number of students in the medical program."

Manitoba Provincial Government News Release of February 4, 2008:

> "Health Minister Theresa Oswald and Advanced Education and Literacy Minister Diane McGifford today announced that MANITOBA will once again expand the number of doctors being trained at the University of Manitoba's faculty of medicine."
>
> "The MANITOAB GOVERNMENT will have expanded the U of M's school of medicine seats by 57 percent with the addition of these 10 new seats. Since 1999, THE PROVINCE has increased the total number of seats by 40."
>
> "The University of Manitoba FACULTY OF MEDICINE IS A PROUD PARTNER WITH THE PROVINCE OF MANITOBA to enhance medical training and education in this province," said Dr. J. Dean Sandham, dean of the faculty of medicine."
>
> "THE MINISTERS also introduced the new Medical Education Curriculum Management System."
>
> "The Government of Manitoba is distributing this news release on behalf of the Province of Manitoba and the University of Manitoba."

Manitoba Provincial Government News Release of April 15, 2008:

> “A new incentive program, DEVELOPED IN PARTNERSHIP with the University of Manitoba Medical School to boost residency opportunities for Manitoba-trained graduates…is the centerpiece of an enhanced, multi-tiered strategy to keep more doctors living and working in Manitoba, Health Minister Theresa Oswald announced today.”

Manitoba Provincial Government News Release of August 20, 2008:

"Oswald said. "We (THE MANITOBA GOVERNMENT) have invested to add 40 new faculty of medicine training seats since taking office..."

"The (MANITOBA GOVERNMENT) ministers noted, since 1999 MANITOBA has: increased the number of physician training seats to 110 from 70; launched a first-of-its-kind physician assistant master's program at the University of Manitoba... announced a 60 percent tuition fee rebate, worth up to $25,000, for physicians who choose to stay and work in Manitoba...increased the number of residency spots for family medicine, emergency medicine, pediatrics and medical oncology."

Manitoba Provincial Government News Release of June 24, 2010:

"We (THE MANITOBA GOVERNMENT) have made significant progress in increasing the number of doctors who provide front-line care to Manitobans,”

"Oswald said." ... For more than a decade, the Manitoba government has embarked on an aggressive strategy to increase its doctor supply including: increasing the number of seats at the University of Manitoba school of medicine to 110 from 70 in 1999.... providing a 60 percent tuition fee rebate up to $25,000 for medical school graduates who choose to stay and practice in Manitoba.... creating a northern and remote family medical residency program to recruit and retain more family doctors to underserved areas.”

Manitoba Provincial Government News Release of December 9, 2010:

> “Manitoba medical students who agree to work in areas most in need of doctors will have their medical school costs fully covered by the province under a NEW PROGRAM announced today by Premier Greg Selinger.... The program is open to all medical school students.”

"We are proud to serve as Manitoba's medical school said Dr. Brian Postl, dean, faculty of medicine...."

Manitoba Provincial Government News Release of March 9, 2012:

> "A record number of medical students have signed up to serve in rural and northern communities that need them the most in exchange for free medical school thanks to a a recently expanded doctor-recruitment initiative, Health Minister Theresa Oswald announced today"
>
> "The incredible success we've seen in the FIRST YEAR of the free medical school program shows us we're on the right track to recruiting more doctors to the rural and northern communities where they're needed the most."
>
> "Under the expanded program, grants range from $12,000 to $25,000 per year, based on their year of study, the student's specialty and where they choose to work after graduation."

Manitoba Provincial Government News Release of July 25, 2012:

> "Since 1999, the PROVINCIAL GOVERNMENT has... adjusting the admissions criteria to give consideration to rural applicants, which in the last three years has resulted in nearly half of the students admitted to medical school having rural roots..."

Manitoba Provincial Government News Release of November 9, 2012:

> "Health Minister Theresa Oswald stated that the MANITOBA GOVERNMENT has introduced more medical residencies in rural Manitoba."

9. The above quotes from the MB Government News Releases demonstrate that MB and the U of M are in partnership in the running of the Faculty of Medicine, or at the very least MB's involvement in the guiding/controlling/running of the Faculty of Medicine is to such an extent as to require the Faculty of Medicine to abide by the *Canadian Charter of Rights and Freedoms* in all things it does that affect and relate to admissions to the Faculty of Medicine. MB's involvement in the Faculty of Medicine has included being part of:

(i) in each of the years since 2000 in which a change was made to how many students would be allowed into medical school, determining the number of students that would be allowed to become first year medical students;

(ii) setting admissions criteria;

(iii) setting admissions formulae;

(iv) providing funding for students in the Faculty of Medicine in very large amounts and of different types;

(v) setting the types of residency spots that will be provided in the Faculty of Medicine;

(vi) setting the number of residency spots that will be provided in the Faculty of Medicine;

(v) setting the locations of residency spots that will be provided in the Faculty of Medicine.

10. For each of the other faculties of the U of M, the U of W and the U of Brandon, the Government of MB has done NONE of the above or their equivalents.

11. Since 2000, MB Government Ministers have attended many gatherings of classes of the Faculty of Medicine, however, MB Government Ministers have attended virtually NO gatherings of all of the other classes in all of the other faculties at the U of M and at the U of W and at the U of Brandon all put together.

12. The MB Government has released approximately over 1,000% more News Releases about what they are doing in and with the Faculty of Medicine, than they have released on all of the other faculties at the U of M, the U of W and the U of Brandon put together.

13. The U of M and MB have been in partnership in the Faculty of Medicine since at least as early as about 2000. The purpose of aforesaid partnership has been, inter alia, toward gaining the profits of increasing the number of doctors graduating from the Faculty of Medicine,

increasing the number of graduating doctors that practice medicine in MB after graduation, and directing medical students into areas of specialty in which MB desires more doctors.

14. Pursuant to *The Partnership Act*, C.C.S.M. c P30, and in particular sections 2, 3, 8, 9, 12, 13, 15, 18, and 19, and subsections 4 (c), and 20(2), the U of M and MB have been partners in the Faculty of Medicine since at least as early as about 2000.

15. Between January and September of 2005 the U of M and MB knew that Ms. Olfman had to decide in 2005, based on the information they gave to her in 2005, which Canadian university's faculty of medicine she would be applying to enter between 2008 and 2010, so that she could take the pre-med courses at that university, which that university required, and establish her minimum two year residence in the province in which that university was situated, so that three to five years after 2005 (when she would be in a position to do so) she would be eligible to apply to that university's faculty of medicine as a regular citizen of that province.

16. Between January and September of 2005, and in particular after Ms. Olfman applied to the U of M, it was known to the U of M that Ms. Olfman was a minor (ie. under the age of 18). Between January and September of 2005, the U of M, for itself and for MB, provided information to Ms. Olfman on the entrance requirements and admissions formula that would be used to determine if she would be offered a position in the Faculty of Medicine when she would be in a position to apply to enter medicine, which would be between the years 2008 and 2010.

17. Between January and September of 2005 the U of M and MB knew that Ms. Olfman's

only source of information on the entrance requirements and admissions formula that would be used to determine if she would be offered a position in the Faculty of Medicine when she would be in a position to apply (between 2008 and 2010), was the information that the U of M was providing to Ms. Olfman in 2005. In 2005 the U of M and MB knew that Ms. Olfman had no option whatsoever, except to rely solely and entirely on the information they provided to her on what would be the entrance requirements and admissions formula that would be used to determine if she was offered a position as a first year medical student between 2008 and 2010.

18. Between January and September of 2005 the U of M and MB knew or ought to have known that based on the information they gave to Ms. Olfman in 2005, Ms. Olfman was going to decide to either go to another university with a view to applying to that other university's faculty of medicine between 2008 and 2010, or she was going to enter the U of M, and spend three to four years and thousands of hours at the U of M taking pre-med courses and studying, and spend between twelve thousand and twenty thousand dollars on tuition fees, based on the Faculty of Medicine entrance requirements and admissions formula the U of M and MB told to her in 2005.

19. Between January and September of 2005 the U of M and MB knew or ought to have known that by telling Ms. Olfman that the Faculty of Medicine's curriculum was changing, and NOT stating that its admissions formula was changing or was subject to change, that they were telling her that the Faculty of Medicine's admissions formula was NOT changing.

20. Based on the *University of Manitoba Admissions Handbook 2005"* and the "*University 1 STARTbook, 2005 – 2006, A Companion Guide to the Undergraduate Calendar and Registration*

Guide (the "2005-2006 Admissions Material") and on the subsequent actions and payments to the U of M by Ms. Olfman in 2005, the 2005 Contract was formed between the U of M and MB and Ms. Olfman, which contract required the Faculty of Medicine to offer admission to Ms. Olfman as a first year medical student, if by 2010 Ms. Olfman:

(i) previously or at that time completed the required prerequisite U of M courses and program, and applied to the Faculty of Medicine, and

(ii) in any year in which she applied, Ms. Olfman obtained an admissions score at least as high as the lowest admissions score of an applicant in the regular MB residents category who was offered admission to the Faculty of Medicine in that year, and

(iii) wherein each regular MB resident's admissions score would be calculated based solely on the following admissions score formula: AGPA x 10% + MCAT x 50% + PA x 40% = Student's Admissions Score (where AGPA = Adjusted Grade Point Average, MCAT = Medical College Admissions Test score, and PA = Personal Assessment score), and

(iv) wherein the 40% PA was stated to be made up of three equal components: (1) an interview, (2) the student's personal essay, and (3) letters of reference, each worth ⅓ x 40% = 13⅓ % of the student's total admissions score, and

(v) if Ms. Olfman wrote the MCAT a multiple of times, the MCAT score that would be used in the admissions score formula would be her highest current MCAT score.

21. By no later than the middle of September 2006, through the *"University of Manitoba Undergraduate Calendar and Registration Guide for the Academic Year 2006 – 2007" and the actions and payments of* Ms. Olfman, the U of M and MB and Ms. Olfman affirmed The 2005 Contract and extend the dates said in paragraph 20(ii) above, to be between 2007 and 2011.

22. The U of M and MB and Ms. Olfman are in agreement that the academic components of the Faculty of Medicine's admissions criteria are the applicant's Adjusted Grade Point Average ("AGPA") and the applicant's Medical College Admissions Test ("MCAT") score.

23. The U of M and MB and Ms. Olfman are in agreement that as regards Ms. Olfman's academic requirements, her AGPA was 4.12 and her MCAT score (as calculated by the Faculty of Medicine) was 10.8, and that Ms. Olfman's combined AGPA and MCAT were HIGHER than approximately 66% of the regular Manitoba resident applicants who were admitted in the admissions process in question.

24. Ms. Olfman completed all of her contractual requirements under the 2005 Contract to entitle her to be offered a position as a first year student in the Faculty of Medicine; and the U of M and MB breached the 2005 Contract and breached their duty of care and fiduciary duty to Ms. Olfman by:

(i) not having offered her a position as a first year student in the Faculty of Medicine, and

(ii) using a significantly different admissions formula than the formula stated in the 2005-2006 Admissions Material.

25. The significant differences between the admissions formula stated in the 2005-2006 Admissions Material, and the admissions formula which the Faculty of Medicine actually used, which differences were in breach of the 2005 Contract, duty of care and fiduciary duty, are:

(i) in violation of the 2005-2006 Admissions Material, secretly and unknown to Ms. Olfman, the Faculty of Medicine used a Rurality Co-efficient which:

(a) unfairly disadvantage applicants from Winnipeg, including Ms. Olfman,

(b) was invalid as it could not accomplish the result which the Faculty of Medicine claimed it could accomplish, and

(c) was illegal;

(ii) in violation of the 2005-2006 Admissions Material, the Faculty of Medicine did not use an applicant's adjusted grade point average ("AGPA") and Medical College Admissions Test ("MCAT") score as the most significant factors in determining admission;

(iii) in violation of the 2005-2006 Admissions Material, the Faculty of Medicine did NOT use an interview of applicants by people on the Faculty of Medicine admissions committee;

(iii) in violation of the 2005-2006 Admissions Material, the Faculty of Medicine allotted an admissions score of zero to Ms. Olfman's references, work experience, volunteer experience, life experiences, and award for being the best all-round student graduating from her large Winnipeg high school, which attested to her character qualities; and

(iv) in violation of the 2005-2006 Admissions Material, the Faculty of Medicine used a new Multi Mini Interview ("MMI") system which they were not entitled to use, and which:

(a) was invalid as it was NOT capable of accomplishing the results which the Faculty of Medicine claimed it could accomplish, and

(b) was illegal.

26. In 2009 Ms. Olfman read the ***"****READ ME FIRST – FACULTY OF MEDICINE Admissions Information"* guide and its "U of M *FACULTY OF MEDICINE Application Information bulletin 2010 – 2011 Session* (the "2010-2011 Medicine Admissions Material") which documents advised prospective students of the Faculty of Medicine entrance requirements

and admissions formula that would be used to determine if they would be offered a position in the Faculty of Medicine in the 2010 – 2011 admissions process.

27. In 2009 the U of M and MB knew that Ms. Olfman's only source of information on the entrance requirements and admissions formula that would be used to determine if she would be offered a position in the Faculty of Medicine in its about to begin 2010 – 2011 admissions process, was the information that the U of M was providing to Ms. Olfman at that time. The U of M and MB knew that Ms. Olfman had no option whatsoever, except to rely solely and entirely on the information they provided to her on what would be the entrance requirements and admissions formula that would be used to determine if she was offered a position as a first year medical student in aforesaid 2010 – 2011 admissions process.

28. The *FACULTY OF MEDICINE Application Information bulletin 2010 – 2011 Session* was distributed to Ms. Olfman in 2009 to advise her of the Faculty of Medicine's new admissions formula, which the Faculty of Medicine therein stated it would use in the aforesaid 2010 – 2011 admissions process. In the *FACULTY OF MEDICINE Application Information bulletin 2010 – 2011 Session* at page 6, it was clearly written that:

> "7 RANKING OF APPLICANTS
> The Admissions Committee will calculate a composite score to determine an applicant's FINAL RANKING as follows:
> 7.1 *Manitoba and Out-of-Province Applicant Pools*
> Applicants are ranked by a Composite Score determined as follows:
> AGPA 15% MCAT 40% PAS 45%"

Where, according to the 2010 - 2011 Medicine Admissions Material:

> "The PAS is based on the information provided in writing and

orally by the applicant …"

29. The 2010 - 2011 Medicine Admissions Material further confirms that the 45% (PAS) Personal Assessment Score contains significant scoring components unrelated to the interview (ie. unrelated to the MMI), by stating that there are:

"pre-interview PAS scores…"

30. Based on information on the entrance requirements and admissions formula in the 2010-2011 Medicine Admissions Material given by the U of M to Ms. Olfman immediately before she entered said 2010 – 2011 admissions process, on approximately October 5, 2009, Ms. Olfman filled out and submitted the Faculty of Medicine application form in question, and paid the U of M their $95.00 application fee, and the 2009 Contract was formed between the U of M and MB and Ms. Olfman, which contract required the Faculty of Medicine to offer admission to Ms. Olfman as a first year medical student, if in the 2010 – 2011 admissions process Ms. Olfman:

(i) obtained an admissions score at least as high as the lowest admissions score of an applicant in the regular MB residents category who was offered admission to the Faculty of Medicine, and

(ii) wherein each regular MB resident's admissions score would be calculated based solely on the following admissions score formula: AGPA x 15% + MCAT x 40% + PAS x 45% = Student's Admissions Score (where AGPA = Adjusted Grade Point Average, MCAT = Medical College Admissions Test score, and PAS = Personal Assessment score), and

(iii) wherein the 45% PA was stated to be made up of three equal components: (1) the personal information provided in writing and orally by the Applicant, (2) the Applicant's referee reports (ie. letters of reference), and (3) the Applicant's Multi Mini Interview ("MMI"), each worth ⅓ x 45% = 15 % of the applicant's total admissions score, and

(iv) if Ms. Olfman wrote the MCAT a multiple of times, the MCAT score that would be used in the admissions score formula would be her highest current MCAT score.

31. The U of M and MB and Ms. Olfman are in agreement that as regards Ms. Olfman's academic requirements, her AGPA was 4.12 and her MCAT score (as calculated by the Faculty of Medicine) was 10.8, and that Ms. Olfman's combined AGPA and MCAT were HIGHER than approximately 66% of the regular Manitoba resident applicants who were admitted.

32. Ms. Olfman completed all of her contractual requirements under the 2009 Contract to entitle her to be offered a position as a first year student in the Faculty of Medicine and the U of M and MB breached the 2009 Contract and breached their duty of care and fiduciary duty to Ms. Olfman by:

(i) not having offered her a position as a first year student in the Faculty of Medicine, and

(ii) using a significantly different admissions formula than the formula stated in the 2010-2011 Medicine Admissions Material.

33. The significant differences between the admissions formula stated in the 2010 - 2011 Medicine Admissions Material, and the admissions formula which the Faculty of Medicine. actually used, which differences were in breach of the 2009 Contract, duty of care and fiduciary duty, are:

(i) in violation of the 2010 - 2011 Medicine Admissions Material, secretly and unknown to Ms. Olfman, the Faculty of Medicine used a Rurality Co-efficient which:

(a) unfairly disadvantage applicants from Winnipeg, including Ms. Olfman,

(b) was invalid as it could not accomplish the result which the Faculty of Medicine claimed it could accomplish, and

(c) was illegal;

(ii) in violation of the 2010 - 2011 Medicine Admissions Material, the Faculty of Medicine did not use an applicant's adjusted grade point average ("AGPA") and Medical College Admissions Test ("MCAT") score as the most significant factors in determining admission;

(iii) in violation of the 2010 - 2011 Medicine Admissions Material, the Faculty of Medicine allotted an admissions score of zero to Ms. Olfman's references, work experience, volunteer experience, life experiences, and award for being the best all-round student graduating from her large Winnipeg high school, which attest to her character qualities; and

(iv) in violation of the 2010 - 2011 Medicine Admissions Material, the Faculty of Medicine used a relatively new Multi Mini Interview ("MMI") system as the most significant factor in determining admission, and which MMI:

(a) was invalid as it was NOT capable of accomplishing the results which the Faculty of Medicine claimed it could accomplish, and

(b) was illegal.

34. When Ms. Olfman was not offered admission to the Faculty of Medicine in its 2010-2011 admissions process she followed the Faculty of Medicine's appeal procedure, first filing a letter of appeal on June 18, 2010 to Dr. MacKalski, Assistant Dean of Admissions for the Faculty of Medicine. On June 25, 2010 Dr. MacKalski rejected Ms. Olfman's appeal with a deceptive letter

intended to hide from Ms. Olfman the facts that the Faculty of Medicine did NOT follow the admissions formula set out in the 2005-2006 Admissions Material and did NOT follow the admissions formula set out in the 2010 - 2011 Medicine Admissions Material.

35. On July 9, 2010 Ms. Olfman took the next step in the appeal process, and appealed to the Faculty of Medicine's Committee For Reconsideration of Admission Appeals. In its letter of July 22, 2010 the Committee For Reconsideration of Admission Appeals advised Ms. Olfman that it had rejected her appeal. On August 9, 2010 Ms. Olfman appealed to the final U of M level of appeal, the U of M's Senate Committee on Admission Appeals.

36. After the Faculty of Medicine received its copy of Ms. Olfman's August 9, 2010 appeal material, the Faculty of Medicine made very major and significant changes to its *FACULTY OF MEDICINE Applicant Information Bulletin for 2011 – 2012 Session*. The Faculty of Medicine then filed its altered *FACULTY OF MEDICINE Applicant Information Bulletin for 2011 – 2012 Session* with the U of M's Senate Committee on Admission Appeals, and falsely claimed that said altered 2011 – 2012 Session Bulletin contained the same information as was in its U of M *FACULTY OF MEDICINE Application Information bulletin 2010 – 2011 Session* (which was the bulletin the U of M gave to Ms. Olfman in 2009 regarding the 2010-2011 admissions process).

37. In his September 8, 2010 letter to the U of M's Senate Committee on Admission Appeals and in his presentation to said Committee, Dr. Martin, Associate Dean of Students of the Faculty of Medicine, admitted that the Faculty of Medicine did NOT use the admissions formula which the 2010 - 2011 Medicine Admissions Material stated would be used.

38. In his September 8, 2010 letter and in his presentation to the U of M's Senate Committee on Admission Appeals, Dr. Martin admitted that contrary to what the 2010-2011 Medicine Admissions Material had stated to Ms. Olfman, the Faculty of Medicine used a secret admissions score formula, called a Z-formula, to refuse to admit Ms. Olfman. No-one, including Dr. Martin, has ever stated how the Z-formula score was calculated which caused Ms. Olfman to not be admitted. Ms. Olfman has never been informed how the Z-formula score was calculated.

39. After September 16, 2010, when MB received the information from Ms. Olfman's appeal to the U of M's Senate Committee On Admission Appeals, MB made a very significant change to its management of how medical students at the Faculty of Medicine would be encouraged to work in under serviced rural areas after they graduated. Based on the advice and information in Ms. Olfman's appeal, MB abandoned its claimed use of rural roots and the Rurality Co-efficient as the means of obtaining more Manitoba trained doctors to work in under serviced rural areas. From and after Ms. Olfman's appeal to the U of M's Senate Committee On Admission Appeals, MB initiated a program of offering all medical students in its Faculty of Medicine, regardless of whether they had rural roots or urban roots, an equal opportunity to obtain the payment of a large amount of money if they worked in under serviced rural areas, with the amount of money they received being tied only to how long they worked in an under serviced rural area.

40. Ms. Olfman's appeal was heard by the U of M's Senate Committee On Admission Appeals on September 16, 2010, at which time Ms. Olfman was represented by her father, Shawn David Olfman, who is also Ms. Olfman's attorney. The U of M's Senate Committee On Admission Appeals was represented by its attorney who was present at all times during the

hearing. The U of M's Senate Committee On Admission Appeals had the benefit of the advice of its attorney (who had been present and representing it at all times during the hearing) when it wrote its September 17, 2010 decision letter to Ms. Olfman. In their September 17, 2010 decision letter to Ms. Olfman the U of M's Senate Committee on Admission Appeals advised Ms. Olfman that her appeal had been rejected, however, they also advised Ms. Olfman that they had NOT made any decisions on the legal issues involved in her appeal. The U of M's Senate Committee on Admission Appeals stated that it considered the legal issues raised in Ms. Olfman's appeal to be beyond its jurisdiction. That was the end of the U of M's appeal process.

41. The U of M Senate Committee on Admission Appeals did NOT make a decision on the legal issue of the merits of Ms. Olfman as a candidate for admission to the Faculty of Medicine. The U of M Senate Committee stated that the legal issue of the merits of Ms. Olfman as a candidate for admission to the Faculty of Medicine was beyond its jurisdiction.

42. The U of M Senate Committee on Admission Appeals also did NOT make a decision on the legal issue of whether or not the MMI should have been used by the Faculty of Medicine in its 2010-2011 admissions process. The U of M Senate Committee stated that the legal issue of whether or not the MMI should have been used by the Faculty of Medicine in its 2010-2011 admissions process was beyond its jurisdiction.

43. The MMI literature itself, states that the MMI asks hypothetical fictitious questions, each of which questions has NO correct answer. The MMI literature states that the MMI tests NO areas of knowledge or study, and tests NO work or volunteer experience. The MMI literature

indicates that the MMI has NO means of verifying the truth of the answers given to the MMI's hypothetical fictitious questions, each of which has NO correct answer. The MMI literature tacitly indicates that it is possible that an applicant who lied in each of his answers to the MMI's hypothetical fictitious questions could receive the highest MMI scores for his lies.

44. The MMI that was given to Ms. Olfman by the Faculty of Medicine in the 2010 – 2011 admissions process was conducted by eleven volunteer Interviewers. The Faculty of Medicine called the MMI given to Ms. Olfman "Exam 05". Other students in the same Faculty of Medicine 2010 – 2011 admissions process had their MMI given to them by a different eleven volunteer Interviewers. Other students in the same Faculty of Medicine 2010 – 2011 admissions process were not asked to answer the same hypothetical fictitious MMI questions as Ms. Olfman was asked to answer. It is possible that students who received high scores from the different MMI Interviewers who interviewed them, on the different hypothetical fictitious MMI questions they were asked, would have received different scores on the different hypothetical fictitious MMI questions that Ms. Olfman was asked, from the different volunteer MMI Interviewers who conducted the MMI that was given to Ms. Olfman. It is possible that Ms. Olfman would have received different scores on the different hypothetical fictitious MMI questions that some of the other students had been asked, from the different volunteer MMI Interviewers who conducted the MMI that was given to those other students.

45. The backgrounds, knowledge, opinions, abilities, experience and personalities of each of the many different volunteer MMI Interviewers were greatly inconsistent. Some volunteer MMI Interviewers were doctors, others were still students in the Faculty of Medicine who were

younger and less experienced and less educated than some of the applicants whom they interviewed, and other MMI Interviewers were from secret unspecified backgrounds which the Faculty of Medicine refused to reveal.

46. The MMI was NOT conducted within the parameters and rules set out by the U of M for a valid examining/testing/evaluating method/procedure. Contrary to U of M exam/testing/ evaluation regulations and practices:

(i) prior to the MMI Ms. Olfman was NOT told how her answers to the MMI questions would be calculated, scored or graded;

(ii) the MMI did not contain any of the types of grading information found in all other U of M exams and tests;

(iii) after the MMI Ms. Olfman was NOT told how her answers had been scored or graded or anything about the grading or scoring breakdown;

(iv) the MMI was conducted such that its scores were NOT determined, recorded and kept in a manner that safe guarded their accuracy to the minimum standard set by the U of M for the determination, recording and keeping of exam/test/evaluation scores;

(v) prior to the MMI Ms. Olfman was NOT told subject matter, types of questions, or grading guidelines for the MMI, making it impossible for Ms. Olfman to study for the MMI or gain any assistance from professors, tutors, or anyone, to study for the MMI;

(vi) the hypothetical fictitious MMI questions had no correct answers, making it impossible for each volunteer MMI Interviewer, who independently scored and graded each applicant, to know if that applicant’s answer was correct or incorrect;

(vii) each volunteer MMI Interviewer had no means of determining if the applicant they were scoring and grading was truthful in their answer to the hypothetical fictitious MMI question;

(viii) each volunteer MMI Interviewer had no means of determining if the applicant they were scoring and grading plagiarized their answer to the hypothetical fictitious MMI question;

(ix) the MMI was conducted by people who did NOT have the professional qualifications to conduct an exam/test/evaluation, which could determine a person's motivation, capacity to be caring, ethics, tolerance, ability to cope effectively, ability to think critically, ability to be collaborative, or leadership;

(x) each volunteer MMI Interviewer had NO professional qualifications and NO expertise in the subject area of the question on which they were scoring and grading the applicant's answer;

(xi) each volunteer MMI Interviewer had NO professional qualifications to score and grade how an applicant expressed, defended and supported their answer to a hypothetical fictitious MMI question, and therefore could only give a layman's opinion on those aspects, which layman's opinion had no more credibility or worth than would have been the applicant's opinion on how that volunteer MMI Interviewer expressed, defended and supported their answer, had the roles been reversed;

(xii) the names of the people doing the interviewing were kept secret;

(xiii) there was no process by which a student could know how their score/grade had been arrived at;

(xiv) there was no process by which a student could correct or even discuss errors in the score/grade that had been listed for them;

(xv) everything that is normally open and available to demonstrate and ensure the integrity of the Interviewer/Examiner and of the testing/examining/evaluating procedure itself, WAS ABSENT from the MMI.

47. Not a single faculty in the entire U of M, or in the entire U of W or in the entire U of Brandon, does any testing or arrives at any grading, with questions such as those used in the MMI (ie. which cannot be studied for and have no correct answers). The MMI is the ANTITHESIS of all institutions of learning since the beginning of time, the philosophies and goals of which have been to teach, require study, and then grade a student on their demonstration of what they have learned. In addition, CONTRARY to every field of study and every testing method in the world, in the MMI the person being tested has approximately equal knowledge in the subject matter and approximately equal capacity to evaluate, as does the Examiner.

48. The volunteer MMI interviewers were NOT required to have any professional qualifications or expertise in psychology, psychiatry, or personnel hiring or management. The volunteer MMI interviewers were NOT required to have any professional qualifications or expertise in any form of character assessment or character evaluation. The MMI volunteer interviewers were NOT required to have any qualifications or expertise in the subject matter of the question on which they would be scoring the applicant's response. The MMI volunteer interviewers were NOT required to have any professional qualifications or expertise in evaluating how an applicant's response was expressed, presented or defended.

49. Each of the 11 volunteer interviewers scored each applicant independently, in eight (8) minutes, based on the applicant's response to a hypothetical fictitious question, without the benefit of advice or assistance from any of the other volunteer interviewers or anyone else. Each of the eleven volunteer interviewers met the applicant, by themself, only one time, for no more than eight (8) minutes. In those 8 minutes, each of the 11 volunteer interviewers listened to the applicant's response to a hypothetical fictitious question, which question had NO correct answer. Then, based solely, exclusively and only on those eight (8) minutes, and not knowing whether or not the applicant's answer was correct or even if the applicant's answer was truthful, each volunteer Interviewer, on their own, made up their own MMI score for the applicant.

50. The Faculty of Medicine does NOT claim that it refused to offer admission to Ms. Olfman because she had less academic merit than all of the other regular Manitoba resident applicants that were offered admission instead of Ms. Olfman. The Faculty of Medicine does NOT claim that it refused to offer admission to Ms. Olfman because her prior work and volunteer experience and awards indicated that she had less demonstrated caring, ethics, tolerance, effective coping, critical thinking, collaborative/ leadership and motivation than all of the other regular Manitoba resident applicants that were offered admission instead of Ms. Olfman. The Faculty of Medicine does NOT claim that it refused to offer admission to Ms. Olfman because her references were not as good as the references of all of the other regular Manitoba resident applicants that were offered admission instead of Ms. Olfman. The Faculty of Medicine does NOT claim that it refused to offer admission to Ms. Olfman because all combined, her academic merit, work and volunteer experience and awards, and references,

produced a lower score than all of the other regular Manitoba resident applicants that were offered admission instead of Ms. Olfman.

51. On the MMI scoring sheet on Ms. Olfman identified as “Station: 09, Exam 05”, the original score recorded for Ms. Olfman was crossed out and a different, higher score, was marked in. The Faculty of Medicine has not stated what, if any system, it had in place to ensure that the score on each of its scoring sheets identified as stations: 01 to 08, and stations 10 to 12, (all of Exam 05) was the score which the Interviewer intended Ms. Olfman to receive. Despite many requests by Ms. Olfman and by her attorney, Ms. Olfman and her attorney were: (a) NOT told the names of any of the volunteer MMI Interviewers; (b) NOT told what the Interviewers’ qualifications were at the time in question in the area of the MMI question on which they graded Ms. Olfman; (c) NOT told how any of Ms. Olfman’s MMI scores were arrived at, calculated or determined; (d) NOT told any specifics on how the MMI scores were supposed to be determined and what was required for a high score; (e) NOT allowed to communicate with or receive any communications from any of the volunteer MMI Interviewers; and (f) NOT told the names of the people of the Faculty of Medicine’s Admissions Committee.

52. During his presentation to the U of M Senate Committee on Admission Appeals Dr. Martin stated that the MMI which the U of M uses is the same MMI as was developed by McMaster University, and that the U of M uses McMaster’s MMI.

53. McMasters, the inventor and developer of the MMI which was used by the Faculty of Medicine, has stated in writing on their website, that the purpose for the existence of the MMI

and the purpose for McMasters use of the Verbal Reasoning ("VR") score from the MCAT, are the same; that they both predict the same thing about a person. Ms. Olfman does not agree that the MMI has any value whatsoever, and states that the MMI has no place in the selection process for medical students. However, if McMasters is correct, that both the MMI and the VR portion of the MCAT predict the same thing about a person, then a GREAT DICHOTOMY EXISTS between the MMI score which the Faculty of Medicine recorded for Ms. Olfman, placing her in the lowest quintile, which would be below 40%, and the VR portion of Ms. Olfman's MCAT score, which was a VR of 13, which VR score places Ms. Olfman in the 98.5% to 99.5% percentile out of all students in North America who wrote the MCAT. MB and the U of M have provided NO explanation of how it is possible that the U of M's MMI placed Ms. Olfman below 40%, whereas the MCAT's VR (which is a uniform professionally made and professionally graded test, written by many tens of thousands of students all across Canada and the United States) placed Ms. Olfman at between 98.5% and 99.5%, on an item which, according to McMasters (the MMI's inventor), provides the same predictions on an applicant as the MMI.

54. Except in the Faculty of Medicine, in all of the other U of M's faculties, and in all of the U of W and the U of Brandon's faculties, no-one is denied admission wholly or partly based on their holding or expressing or defending of any of the legally allowed opinions on matters on which all Canadians are entitled to hold and express and defend those legally allowed opinions.

55. Except in the Faculty of Medicine, all faculty members and administrators at the U of M's other faculties, and in all faculties of the U of W and the U of Brandon, believe that the holding and expressing and defending of any of the legally allowed opinions, in no way

diminishes or enhances a person's: academic qualifications, professional merit, job or work performance, job or work rating, or that person's entitlement to be admitted to that faculty.

56. Except in the Faculty of Medicine, all faculty members and administrators at the U of M's other faculties, and in all faculties of the U of W and the U of Brandon, believe that what one student thinks of how another student expresses himself or herself or supports and defends his or her opinions or arguments, in no way diminishes or enhances that other student's: academic qualifications, professional merit, job or work performance, job or work rating, or that other student's entitlement to be admitted to that faculty.

57. Except in the Faculty of Medicine, all faculty members and administrators at the U of M's other faculties, and in all faculties of the U of W and the U of Brandon, believe that what a professor thinks of how a student expresses himself or herself or supports and defends his or her opinions or arguments in a field in which that professor has NO qualifications, in no way diminishes or enhances that student's: academic qualifications, professional merit, job or work performance, job or work rating, or that student's entitlement to be admitted to that faculty.

58. The Faculty of Medicine falsely claimed that Ms. Olfman's references, volunteer experience, award as best all-round student graduating from the large Winnipeg high school from which she graduated (which was based on the assessments of her, by her high school teachers and administrators during her grade 11 and 12 years), and her high performance assessments from her supervisors at Pan Am Pool (based on her work as an instructor, lifeguard, and (sometimes) supervisor of the entire aquatic facility), were in total, less valuable in assessing Ms.

Olfman's Caring, Ethics, Tolerance, Effective Coping, Critical Thinking, Collaborative/ Leadership and Motivation, than were the 8 minute scores from the MMI volunteer interviewers.

59. The Faculty of Medicine falsely claimed that Ms. Olfman's references, volunteer tutoring experience, award as best all-round student graduating from the large Winnipeg high school from which she graduated, and her high performance assessments from her supervisors at Pan Am Pool (based on her work as an instructor, lifeguard, and (sometimes) supervisor of the entire aquatic facility), were in total, of NO value in assessing Ms. Olfman qualifications to be admitted to medicine and in the admissions score formula gave them a score of zero.

60. The Multi Mini Interview ("MMI"), used by the Faculty of Medicine in the 2010 – 2011 admissions process, is a relatively new system which is used by LESS than one percent (1%) of all university faculties in North America. Over ninety-nine percent (99%) of all North American university faculties do NOT use the MMI.

61. In OVERWHELMING CONTRAST to the MMI, each applicant's university grade point average was arrived at after thousands of hours of university work and study, over a minimum of a three year period, during which the applicant wrote between approximately 50 and 100 term papers, tests, and exams, in a multiple of subjects, which were graded by a multiple of qualified professors. However, the Faculty of Medicine treated the applicant's university grade point average as less significant than the MMI scores.

62. In OVERWHELMING CONTRAST to the MMI, each applicant's MCAT score was

arrived at from the applicant's writing of a five (5) hour long Medical College Admissions Test ("MCAT"). The MCAT is a standard test written across North America by many tens of thousands of students, providing a comparative grade across North American between those many tens of thousands of students in the areas of chemistry, physics, biochemistry, biology, writing, and verbal reasoning. The MCAT has been used by most North American medical schools as a significant factor in determining admission for at least fifty years. However, the Faculty of Medicine treated the applicant's MCAT score as less significant than the MMI.

63. The MMI used by the Faculty of Medicine to attempt to assess, evaluate and determine the caring, ethics, tolerance, effective coping, critical thinking, collaboration, leadership and motivation, of the students, including Ms. Olfman, who applied to the Faculty of Medicine's first year class of 2010, was invalid, as it was NOT capable of determining those students' caring, ethics, tolerance, effective coping, critical thinking, collaboration, leadership or motivation.

64. NOT even a single one of the doctors teaching in the Faculty of Medicine had an MMI used to determine if they should be allowed into medical school. NOT even a single one of the doctors teaching in any Faculty of Medicine anywhere in the world had an MMI used to determine if they should be allowed into medical school. NOT even a single one of the doctors teaching in the Faculty of Medicine had an MMI used to determine if they should be hired for their current job or to determine if they should be promoted. NOT even a single one of the doctors teaching in any Faculty of Medicine anywhere in the world had an MMI used to determine if they should be hired for their current job or to determine if they should be promoted.

65. NO MB government departments, NO U of M faculties, and NO schools in MB use the MMI to determine who they should hire or who they should promote.

66. The U of M Senate Committee on Admission Appeals did NOT make a decision on the legal issues of whether or not the Rurality Co-efficient which was used against Ms. Olfman was valid or legal or should have been used by the Faculty of Medicine in its admissions process.

67. The U of M's and MB's Rurality Co-efficient which artificially increased each of the AGPA and MCAT scores and Personal Assessment Score ("PAS") of rural regular Manitoba residents, and the MMI, are both NOT based on actual academic or job performance or on any other form of competence, and therefore are both prohibited discrimination in violation of the U OF M'S own *Policy on Human Rights*.

68. The Rurality Co-efficient which was used by the Faculty of Medicine in the 2010 – 2011 admissions process discriminated against Ms. Olfman by a factor of up to 13%, based only on her having been born and lived in Winnipeg. Said Rurality Co-efficient gave some rural applicants an unfair 13% advantage over Ms. Olfman, wherein the Faculty of Medicine pretended that said applicants had received A's in courses in which said applicants had only received B's. Said unfair Rurality Co-efficient was used by the Faculty of Medicine in all of its selection criteria calculations, not only in grade calculations. Said Rurality Co-efficient's unfair advantage was given to some rural applicants who came from much wealthier and more financially advantaged personal situations than did Ms. Olfman. Said Rurality Co-efficient's unfair advantage was given to some rural applicants who had lower grades and a lower MCAT

score than Ms. Olfman, because they had spent more time doing leisure activities and less time studying than did Ms. Olfman.

69. In *Health Services and Support – Facilities Subsector Bargaining Assn. v. British Columbia*, [2007] 2 S.C.R. 391, 2007 SCC 27, the Supreme Court of Canada's dicta states that a breach of the United Nations *International Covenant on Civil and Political Rights* must also be a breach of the *Canadian Charter of Rights and Freedoms*. At paragraph 70 the Supreme Court of Canada stated: "As Dickson C.J. observed in the *Alberta Reference,* at p. 349*,* the *Charter* should be presumed to provide at least as great a level of protection as is found in the international human rights documents that Canada has ratified." Therefore, a breach by MB and the U of M of the U.N.'s *International Covenant on Civil and Political Rights* means a breach by MB and the U of M of the *Canadian Charter of Rights and Freedoms*, as the Charter's protections includes all of the protections in the U.N.'s *International Covenant on Civil and Political Rights*.

70. The Rurality Co-efficient used by the Faculty of Medicine against Ms. Olfman because she was born and lived in Winnipeg prior to applying to the Faculty of Medicine was in violation of The United Nations *International Covenant on Civil and Political Rights*:

(i) article 2, which prohibits distinction based on social origin or other status;
(ii) article 25, which grants to every citizen the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions, to have access, on general terms of equality, to public service in her country (ie. education);
(iii) article 26, which prohibits any discrimination and guarantees to all persons equal and effective protection against discrimination on any ground such as political or other opinion, social origin, or other status.

71. The MMI used by the Faculty of Medicine in its 2010 - 2011 admissions process which scored Ms. Olfman based on her thoughts, opinions and beliefs, and on her expressions of those thoughts, opinions and beliefs, was in violation of The United Nations *International Covenant on Civil and Political Rights*:

(i) article 18, which prohibits scoring a person adversely because of their thoughts, consciences or religion;
(ii) article 19, which prohibits scoring a person adversely because of their opinions, expressions of their thoughts and opinions, and their imparting of ideas of all kinds;
(iii) article 26, which prohibits any discrimination and guarantees to all persons equal and effective protection against discrimination on any ground such as political or other opinion, social origin, or other status.

72. The Rurality Co-efficient and MMI in question were also both in violation of The United Nations *Universal Declaration of Human Rights*:

(i) article 1, which states that all human beings are born free and equal in dignity and rights;
(ii) article 2, which states that everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as political or other opinion, or social origin, or other status;
(iii) article 7, which states that all are entitled to equal protection against any discrimination in violation of this Declaration;
(iv) article 21, which states that everyone has the right of equal access to public service in her country (ie. education);
(iv) article 26, which states that everyone has the right to education, and that technical and professional education shall be made generally available and higher education shall be equally accessible to all ON THE BASIS OF MERIT. and
(iv) article 30, which states that nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

73. In addition to the above, the MMI used by the Faculty of Medicine which scored Ms. Olfman based on her thoughts, opinions and beliefs, and on her expressions of those thoughts, opinions and beliefs, was also in violation of the United Nations *Universal Declaration of Human Rights* which states:

(i) article 18, everyone has the right to freedom of thought, conscience and religion; and
(i) article 19, everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

74. The Rurality Co-efficient used by the Faculty of Medicine against Ms. Olfman because she was born and lived in Winnipeg prior to applying to the Faculty of Medicine and the MMI used by the Faculty of Medicine which scored Ms. Olfman based on her thoughts, opinions and beliefs, and on her expressions of those thoughts, opinions and beliefs, were both in violation of sub-sections 2.1.1, 2.1.1.2, and 2.1.4.1 of the U OF M'S own *Respectful Work and Learning Environment* document, which document had an effective date of January 27, 2009, a Revised Date of March 15, 2010, and a Review Date of January 27, 2012.

75. The Rurality Co-efficient and MMI in question were also in violation of sub-sections 2.1, 2.2, and 2.4 of The U OF M's own *Respectful Work and Learning Environment* document, which had an effective date of January 27, 2009, and a Review Date of January 27, 2019.

76. The Rurality Co-efficient and MMI in question were also in violation of the U OF M's own *Policy on Human Rights* which states:

"The University of Manitoba supports equity, diversity and the

> dignity of all people.
> Discrimination imposes burdens on or denies opportunities to individuals or groups and is unfair because it is NOT based on actual academic or job performance, or any other form of competence."

77. MB breached or failed to follow *The Advanced Education Administration Act*, C.C.S.M. c A6.3, including failing to follow subsections 2(1)(a) to (d), inter alia, by: (i) failing to know that all Manitobans did not have an education facility in Manitoba where they would have an equal opportunity, BASED ON THEIR MERIT, to receive an education in medicine to become a doctor, and (ii) failing to ensure that all regular Manitoba residents had an educational facility in Manitoba where they would have an equal opportunity, BASED ON THEIR MERIT, to receive an education in medicine to become a doctor.

78. Based on sub-sections 2 (1) (a) and (b) of *The Medical Act*, C.C.S.M. c. M90, in the MMI used by the Faculty of Medicine, the Faculty of Medicine for whom they acted, and the MMI Interviewers who were not doctors, violated subsection 5 (1) of *The Medical Act*, and are guilty of an offence under subsection 66 (2) of *The Medical Act*.

79. The Faculty of Medicine for whom they acted, and all of the MMI Interviewers in question were guilty of offences under sub-section 11 (1) of *The Psychologists Registration Act*, C.C.S.M. c. P190, as none of them were psychologists or psychiatrists.

80. The Faculty of Medicine used the MMI and Rurality Co-efficient to refuse to admit Ms. Olfman based on her thoughts, opinions, and beliefs, on her expression of her thoughts, opinions

and beliefs, and based on her social origin and place of residence. That is an invalid and illegal refusal to admit Ms. Olfman, which was NOT based on her actual academic or job performance or on any other form of competence or merit, IN BREACH AND VIOLATION OF:

(a) the U of M's and MB's contractual obligations to Ms. Olfman;

(b) the U of M's and MB's fiduciary duty and/or a private law duty of care to Ms. Olfman;

(c) sub-sections 2.1.1, 2.1.1.2, and 2.1.4.1 of the U OF M's own *Respectful Work and Learning Environment* document with an effective date of January 27, 2009, a Revised Date of March 15, 2010, and a Review Date of January 27, 2012;

(d) sub-sections 2.1, 2.2, and 2.4 of the U OF M's own *Respectful Work and Learning Environment* document, with an effective date of January 27, 2009, and a Review Date of January 27, 2019;

(e) the U OF M's own *Policy on Human Rights*;

(f) articles 2, 18, 19, 25, and 26 of The United Nations *International Covenant on Civil and Political Rights*;

(g) articles 1, 2, 7, 18, 19, 21, and 26 of Part A of The United Nations *International Bill of Human Rights*; and

(h) sections 2, 6, 7, 12 and 15 of the *Canadian Charter of Rights and Freedoms*.

81. The *Canadian Charter of Rights and Freedoms*, which is Part I of the *Constitution Act, 1982*, guarantees to all Canadians that the federal government and each province will give all Canadians the rights and freedoms set forth in the *Canadian Charter of Rights and Freedoms*.

82. Subsection 32 (1) (a) of the *Constitution Act,* 1982 requires the Province of Manitoba

("MB") and all entities that are acting for or on behalf of MB, to abide by the *Canadian Charter of Rights and Freedoms* in everything that MB does or has done for it or on its behalf, unless pursuant to subsection 33 (1), MB expressly declares that said thing is to be done notwithstanding a provision included in section 2 or sections 7 to 15 of the *Charter*.

83. Each of the: *The Advanced Education Administration Act*, C.C.S.M. c A6.3; *The Medical Act*, C.C.S.M. c. M90; *The Psychologists Registration Act*, C.C.S.M. c. P190; and *The University of Manitoba Act*, C.C.S.M. c. U60, do NOT contain a notwithstanding declaration as allowed for in subsection 33 (1) of the *Canadian Charter of Rights and Freedoms*. Therefore NONE of aforesaid legislation or any portions of same are exempt from the *Charter*.

84. In section 24 of the *Canadian Charter of Rights and Freedoms* it states:

> "24. (1) Anyone whose rights or freedoms, as guaranteed by this Charter, have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances."

85. The Rurality Co-efficient used by the Faculty of Medicine against Ms. Olfman because she was born and lived in Winnipeg prior to applying to the Faculty of Medicine, and the Faculty of Medicine's MMI, which scored Ms. Olfman based on her thoughts, opinions and beliefs and on her expressions of those thoughts, opinions and beliefs, were both in violation of the *Charter*:

(i) section 2, which states that everyone has freedom of conscience, religion, thought, belief, opinion and expression;
(ii) subsections 6.(2) & (3), which state that every citizen of Canada has the right to pursue the

gaining of livelihood in any province, and which prevents laws or practices that discriminate among persons primarily on the basis of present or previous residence;

(iii) section 7, which states that everyone has the right to liberty and not to be deprived thereof except in accordance with the principles of fundamental justice;

(iv) section 12, which states that everyone has the right to not to be subjected to any cruel or unusual treatment (telling someone they can't go to the medical school in Winnipeg because they were born and lived in Winnipeg is both cruel and unusual treatment; telling someone that their life's accomplishments will be ignored and replaced with the snap opinion of a stranger is both cruel and unusual treatment); and

(iv) section 15, which states that every individual is equal before the law and under the law and has the right to the equal protection and equal benefit of the law without discrimination.

86. In *Rocket v. Royal College of Dental Surgeons of Ontario*, [1990] 2 S.C.R. 232, the Supreme Court of Canada's dicta states that:

> "…It is the legislature's responsibility to enact legislation that embodies appropriate safeguards to comply with the Constitution's requirements."

87. Foreseeable harm was done to Ms. Olfman by the negligence of MB when it did NOT embody appropriate safeguards (to comply with the Constitution's requirements) in the legislation it passed which allowed the Faculty of Medicine to not abide by the *Canadian Charter of Rights and Freedoms* when it made and followed an admissions score formula, rules and requirements, that were not in keeping with the provisions of the *Charter*.

88. Pursuant to subsection 52(1) of the *Constitution Act, 1982*, subsections 34(1)(c) to (h)

inclusive, and subsection 34(1)(s) of *The University of Manitoba Act* are in whole or in part invalid as each of them permits the U of M to make on behalf of MB, and the U of M has so made on behalf of MB, laws or the equivalent of laws in relation to education, which are inconsistent with the provisions of the *Constitution Act, 1982*.

89. It was foreseeable by MB and by the U of M, as the case may be, that harm would result to students, including to Ms. Olfman, if MB and/or the U of M, breached or failed to follow any or all of: *The Advanced Education Administration Act*, C.C.S.M. c A6.3; The *Canadian Charter of Rights and Freedoms*; *The Medical Act*, C.C.S.M. c. M90; *The Psychologists Registration Act*, C.C.S.M. c. P190; The U of M's published *Policy on Human Rights*; The U of M's two published *Respectful Work and Learning Environment* documents; The United Nations *International Covenant on Civil and Political Rights*; and The United Nations *Universal Declaration of Human Rights*. Each of MB and the U of M did breach and/or fail to follow some or all of the aforesaid, and foreseeable harm did result to Ms. Olfman.

90. Ms. Olfman found it upsetting and distressing that the U of M, by its willful and deliberate actions set forth herein, and that Manitoba, by its gross negligence, actions and/or inactions set forth herein, caused her friends and co-workers and supervisors, all of whom knew of her ambition to become a doctor, to have doubts about whether or not she achieved high enough grades in University and a high enough score on her MCAT and had an acceptable character to entitle her to be admitted to the Faculty of Medicine.

91. Ms. Olfman suffered great emotional distress, depression, hardship, loss of esteem in the

eyes of her friends, co-workers and supervisors, diminution of her ability to enjoy life, great stress, and extra work, due to the U of M's willful and deliberate actions set forth herein and due to The Province of Manitoba, by its gross negligence, actions and inactions set forth herein.

92. If Ms. Olfman is successful in her claim, and the court orders that she be admitted to the Faculty of Medicine, because of the aforesaid actions of the defendants, Ms. Olfman will have suffered a loss of income equal to the difference in weekly earnings between her current employment income and the average income of a Manitoba doctor, multiplied by the number of weeks from and including the first week of September, 2010 up to the week in which she could begin taking classes at the Faculty of Medicine as a first year medical student.

93. Punitive damages are also claimed against the U of M and MB, because at all times, or at least from and after September 16, 2010, the U of M and MB knew or ought to have known that they were willfully breaching and violating their contractual obligations to Ms. Olfman, their fiduciary duty and/or a private law duty of care to Ms. Olfman, both of the U OF M's own *Respectful Work and Learning Environment* documents, the U OF M's own *Policy on Human Right*, the United Nations *International Covenant on Civil and Political Rights* and *International Bill of Human Rights*, and the *Canadian Charter of Rights and Freedoms*.

94. The plaintiff pleads and relies on:

(i) The United Nations *International Covenant on Civil and Political Rights*, and

(ii) The United Nations *International Bill of Human Rights*, and in particular Part A thereof, *the Universal Declaration of Human Rights*.

(iii) The U of M's own *Respectful Work and Learning Environment* document, with an effective date of January 27, 2009, a Revised Date of March 15, 2010, and a Review Date of January 27, 2012;

(iv) The U of M's own *Respectful Work and Learning Environment* document, with an effective date of January 27, 2009, and a Review Date of January 27, 2019;

(v) The U of M's own *Policy on Human Rights*;

(vi) *The Advanced Education Administration Act*, C.C.S.M. c A6.3;

(vii) The *Manitoba Act, 1870*, 33 Victoria, c 3 (Canada);

(viii) *The Medical Act*, C.C.S.M. c. M90;

(ix) The *Partnership Act*, C.C.S.M. c P30;

(x) *The Psychologists Registration Act*, C.C.S.M. c. P190;

(xi) *Trade-marks Act*, R.S., c. T-10, s. 1. currently, and as it was on August 30, 1971; and

(xii) The *Constitution Act, 1982*, Part I thereof, the *Canadian Charter of Rights and Freedoms*.

95. The plaintiff therefore claims the relief set out in paragraph 1 hereof.

Date: July 31, 2013

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